香港申訴專員用箋
THE OMBUDSMAN, HONG KONG

OUR REF:

DATE: 25 June 2008

The Honourable Donald Tsang, GBM
The Chief Executive
Hong Kong Special Administrative Region
People's Republic of China

Dear Sir,

Pursuant to Section 3(4) of Schedule 1A to The Ombudsman Ordinance, I have the honour of submitting my report on the exercise of the function of The Ombudsman in the year April 2007 to March 2008. This includes a statement of accounts and the auditor's report on the statement.

Yours faithfully,

(Alice TAI)
The Ombudsman

Encl.

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THE OMBUDSMAN

FINANCIAL STATMENTS

FOR THE YEAR ENDED

31ST MARCH 2008

Independent auditor's report to The Ombudsman

(Established in Hong Kong pursuant to The Ombudsman Ordinance)

We have audited the financial statements of The Ombudsman set out on pages 3 to 15, which comprise the balance sheet as at 31 March 2008, and the statement of income and expenditure, the statement of changes in funds and the cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory notes.

The Ombudsman's Responsibility for the Financial Statements

The Ombudsman is responsible for the preparation and the true and fair presentation of these financial statements in accordance with Hong Kong Financial Reporting Standards issued by the Hong Kong Institute of Certified Public Accountants. This responsibility includes designing, implementing and maintaining internal control relevant to the preparation and the true and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. This report is made solely to you, in accordance with our agreed terms of engagement, and for no other purpose. We do not assume responsibility towards or accept liability to any other person for the contents of this report.

We conducted our audit in accordance with Hong Kong Standards on Auditing issued by the Hong Kong Institute of Certified Public Accountants. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance as to whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and true and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by The Ombudsman, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

KPMG

Independent auditor's report to The Ombudsman (continued)

(Established in Hong Kong pursuant to The Ombudsman Ordinance)

Opinion

In our opinion, the financial statements give a true and fair view of the state of affairs of The Ombudsman as at 31 March 2008 and of its surplus and cash flows for the year then ended in accordance with Hong Kong Financial Reporting Standards.

Certified Public Accountants
8th Floor, Prince's Building
10 Chater Road
Central, Hong Kong
23 May 2008

Statement of income and expenditure for the year ended 31 March 2008

(Expressed in Hong Kong dollars)

	Note		*2008*		*2007*
Income					
Government subventions	7	$	81,652,442	$	81,368,258
Amortisation of Government subventions	7		2,965,040		3,103,587
Interest income on bank deposits			10,170,894		8,987,647
Other income			11,594		3,051
		$	94,799,970	$	93,462,543
Expenditure					
Operating expenses	9		(65,617,386)		(57,820,476)
Surplus for the year		$	29,182,584	$	35,642,067

Statement of changes in funds for the year ended 31 March 2008

The surplus in the statement of income and expenditure is the only change in net funds for the current and prior years.

The notes on pages 6 to 15 form part of these financial statements.

Balance sheet as at 31 March 2008

(Expressed in Hong Kong dollars)

	Note	*2008*	*2007*
ASSETS			
Non-current assets			
Property, plant and equipment	5	$ 20,998,597	$ 22,069,333
Prepaid operating lease	4	66,413,516	67,807,736
		$ 87,412,113	$ 89,877,069
Current assets			
Deposits and prepayments		$ 793,267	$ 613,828
Interest receivable		4,490,898	3,774,541
Time deposits with maturity over three months		224,206,000	192,914,000
Cash and cash equivalents	6	4,343,179	5,225,844
		$ 233,833,344	$ 202,528,213
Total assets		$ 321,245,457	$ 292,405,282
LIABILITIES			
Non-current liabilities			
Contract gratuity payable - non-current	8	$ 3,381,877	$ 2,380,059
Government subventions - non-current	7	82,807,477	85,768,433
		$ 86,189,354	$ 88,148,492
Current liabilities			
Other payables and accruals		$ 3,675,939	$ 1,295,553
Contract gratuity payable - current	8	3,018,312	3,777,885
Government subventions - current	7	2,965,044	2,969,128
		$ 9,659,295	$ 8,042,566
Total liabilities		$ 95,848,649	$ 96,191,058
FUNDS			
Accumulated funds		$ 225,396,808	$ 196,214,224
Total funds and liabilities		$ 321,245,457	$ 292,405,282

Approved and authorised for issue by The Ombudsman on 23 May 2008

) The Ombudsman

The notes on pages 6 to 15 form part of these financial statements.

Cash flow statement for the year ended 31 March 2008

(Expressed in Hong Kong dollars)

	Note	2008	2007
Operating activities			
Surplus for the year		$ 29,182,584	$ 35,642,067
Adjustments for:			
- Interest income		(10,170,894)	(8,987,647)
- Depreciation		1,932,915	1,833,463
- Amortisation of prepaid operating lease		1,394,220	1,394,220
- Amortisation of Government subventions		(2,965,040)	(3,103,587)
Operating surplus before changes in working capital		$ 19,373,785	$ 26,778,516
(Increase)/decrease in deposits and prepayments		(179,439)	104,622
Increase in other payables and accruals		2,380,386	111,771
Increase/(decrease) in contract gratuity payable		242,245	(1,695,026)
Net cash generated from operating activities		$ 21,816,977	$ 25,299,883
Investing activities			
Interest received		$ 9,454,537	$ 6,632,217
Purchase of property, plant and equipment		(862,179)	(981,431)
Increase in bank deposits with original maturity over 3 months		(31,292,000)	(51,745,484)
Net cash used in investing activities		$ (22,699,642)	$ (46,094,698)
Decrease in cash and cash equivalents		$ (882,665)	$ (20,794,815)
Cash and cash equivalents at beginning of the year	6	5,225,844	26,020,659
Cash and cash equivalents at end of the year	6	$ 4,343,179	$ 5,225,844

The notes on pages 6 to 15 form part of these financial statements.

Notes to the financial statements

(Expressed in Hong Kong dollars unless otherwise indicated)

1 Status of The Ombudsman

The Ombudsman was established as a corporation sole by statute on 19 December 2001. The functions of The Ombudsman are prescribed by the Ombudsman Ordinance.

The address of its registered office is 30/F, China Merchants Tower, Shun Tak Centre, 168-200 Connaught Road Central, Hong Kong.

2 Significant accounting policies

(a) Statement of compliance

These financial statements have been prepared in accordance with all applicable Hong Kong Financial Reporting Standards ("HKFRSs"), which collective term includes all applicable individual Hong Kong Financial Reporting Standards, Hong Kong Accounting Standards ("HKASs") and Interpretations issued by the Hong Kong Institute of Certified Public Accountants ("HKICPA"), accounting principles generally accepted in Hong Kong. A summary of the significant accounting policies adopted by The Ombudsman is set out below.

The HKICPA has issued certain new and revised HKFRSs that are first effective or available for early adoption for the current accounting period of The Ombudsman. Note 3 provides information on any changes in accounting policies resulting from initial application of these developments to the extent that they are relevant to The Ombudsman for the current and prior accounting periods reflected in these financial statements.

(b) Basis of preparation of the financial statements

The measurement basis used in the preparation of the financial statements is the historical cost basis.

The preparation of financial statements in conformity with HKFRSs requires management to make judgements, estimates and assumptions that affect the application of policies and reported amounts of assets, liabilities, income and expenditure. The estimates and associated assumptions are based on historical experience and various other factors that are believed to be reasonable under the circumstances, the results of which form the basis of making the judgements about carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

2 Significant accounting policies (continued)

(b) *Basis of preparation of the financial statements (continued)*

The estimates and underlying assumptions are reviewed on an ongoing basis. Revisions to accounting estimates are recognised in the period in which the estimate is revised if the revision affects only that period, or in the period of the revision and future periods if the revision affects both current and future periods.

(c) *Property, plant and equipment and depreciation*

Property, plant and equipment are stated in the balance sheet at cost less accumulated depreciation and impairment losses (see note 2(e)).

Depreciation is calculated to write off the cost of items of property, plant and equipment less their estimated residual value, if any, using the straight-line method over their estimated useful lives as follows:

Leasehold improvements	10 years
Building	40 years
Office equipment	5 years
Office furniture	5 years
Computer equipment	4 years
Motor vehicles	5 years

Both the useful life of an asset and its residual value, if any, are reviewed annually.

Gains or losses arising from the retirement or disposal of an item of property, plant and equipment are determined as the difference between the net disposal proceeds and the carrying amount of the item and are recognised in the statement of income and expenditure on the date of retirement of disposal.

(d) *Operating leases*

Leases where substantially all the risks and rewards of ownership of assets remain with the lessor are accounted for as operating leases. Payments made under operating leases net of any incentives received from the lessor are charged to the statement of income and expenditure on a straight-line basis over the accounting periods covered by the lease term.

(e) *Impairment of assets*

Internal and external sources of information are reviewed at each balance sheet date to identify indications that the property, plant and equipment may be impaired or an impairment loss previously recognised no longer exists or may have decreased.

2 Significant accounting policies (continued)

(e) Impairment of assets (continued)

If any such indication exists, the property, plant and equipment's recoverable amount is estimated. An impairment loss is recognised whenever the carrying amount of an asset exceeds its recoverable amount.

(i) Calculation of recoverable amount

The recoverable amount of a property, plant and equipment is the greater of its net selling price and value in use. In assessing value in use, the estimated future cash flows are discounted to their present value using a pre-tax discount rate that reflects current market assessments of time value of money and the risks specific to the asset. Where a fixed asset does not generate cash inflows largely independent of those from other assets, the recoverable amount is determined for the smallest group of assets that generates cash inflows independently (i.e. a cash-generating unit).

(ii) Reversals of impairment losses

An impairment loss is reversed if there has been a change in the estimates used to determine the recoverable amount.

A reversal of impairment losses is limited to the asset's carrying amount that would have been determined had no impairment loss been recognised in prior years. Reversals of impairment losses are credited to the statement of income and expenditure in the year in which the reversals are recognised.

(f) Other payable and accruals

Other payable and accruals are initially recognised at fair value and thereafter stated at amortised cost unless the effect of discounting would be immaterial, in which case they are stated at cost.

(g) Employee benefits

Salaries, gratuities, performance pay, paid annual leave, leave passage and the cost to The Ombudsman of non-monetary benefits are accrued in the year in which the associated services are rendered by employees of The Ombudsman. Where payment or settlement is deferred and the effect would be material, these amounts are stated at their present values.

Contributions to Mandatory Provident Funds as required under the Hong Kong Mandatory Provident Fund Schemes Ordinance are recognised as an expense in the statement of income and expenditure as incurred.

2 Significant accounting policies (continued)

(h) Provisions and contingent liabilities

Provisions are recognised for liabilities of uncertain timing or amount when The Ombudsman has a legal or constructive obligation arising as a result of a past event, it is probable that an outflow of economic benefits will be required to settle the obligation and a reliable estimate can be made. Where the time value of money is material, provisions are stated at the present value of the expenditure expected to settle the obligation.

Where it is not probable that an outflow of economic benefits will be required, or the amount cannot be estimated reliably, the obligation is disclosed as a contingent liability, unless the probability of outflow of economic benefits is remote. Possible obligations, whose existence will only be confirmed by the occurrence or non-occurrence of one or more future events are also disclosed as contingent liabilities unless the probability of outflow of economic benefits is remote.

(i) Government grants

Grants from the government are recognised at their fair value where there is a reasonable assurance that the grant will be received and The Ombudsman will comply with attached conditions.

Government grants relating to costs are deferred and recognised in the statement of income and expenditure over the period necessary to match them with the costs that they are intended to compensate.

Government grants relating to property, plant and equipment are included in non-current liabilities as deferred government subventions and are credited to the statement of income and expenditure on a straight-line basis over the expected lives of the related assets.

(j) Income recognition

Provided it is probable that the economic benefits will flow to The Ombudsman and the income and expenditure, if applicable, can be measured reliably, income is recognised in the statement of income and expenditure as follows:

(i) Government subventions
Government subventions are accounted for on an accrual basis in accordance with note 2(i).

(ii) Interest income
Interest income is recognised as it accrues using the effective interest method.

(iii) Other income
Other income is recognised on an accrual basis.

2 Significant accounting policies (continued)

(k) Related parties

For the purposes of these financial statements, a party is considered to be related to The Ombudsman if:

(i) the party has the ability, directly or indirectly through one or more intermediaries, to control The Ombudsman or exercise significant influence over The Ombudsman in making financial and operating policy decisions, or has joint control over The Ombudsman;

(ii) The Ombudsman and the party are subject to common control;

(iii) the party is a member of key management personnel of The Ombudsman or The Ombudsman's parent, or a close family member of such an individual, or is an entity under the control, joint control or significant influence of such individuals;

(iv) the party is a close family member of a party referred to in (i) or is an entity under the control, joint control or significant influence of such individuals; or

(v) the party is a post-employment benefit plan which is for the benefit of employees of The Ombudsman or of any entity that is a related party of The Ombudsman.

Close family members of an individual are those family members who may be expected to influence, or be influenced by, that individual in their dealings with the entity.

3 Changes in accounting policies

The HKICPA has issued a number of new and revised HKFRSs and Interpretations that are first effective or available for early adoption for the current accounting period of The Ombudsman.

There have been no significant changes to the accounting policies applied in these financial statements for the years presented as a result of these developments. However, as a result of the adoption of HKFRS 7, "Financial instruments: Disclosures" and the amendment to HKAS 1, "Presentation of financial statements: Capital disclosures", there have been some additional disclosures provided as follows:

As a result of the adoption of HKFRS 7, the financial statements include expanded disclosure about the significance of the financial instruments and the nature and extent of risks arising from those instruments, compared with the information previously required to be disclosed by HKAS 32, "Financial instruments: Disclosure and presentation". These disclosures are provided throughout these financial statements, in particular in note 15.

3 Changes in accounting policies (continued)

The amendment to HKAS 1 introduces additional disclosure requirements to provide information about the level of capital and The Ombudsman's objectives, policies and processes for managing capital. These new disclosures are set out in note 14.

Both HKFRS 7 and the amendment to HKAS 1 do not have any material impact on the classification, recognition and measurement of the amounts recognised in the financial instruments.

The Ombudsman has not applied any new standard or interpretation that is not yet effective for the current accounting period (see note 16).

4 Prepaid operating leases

The Ombudsman's interests in leasehold land represent prepaid operating lease payments and their net book values are analysed as follows:

	2008	*2007*
In Hong Kong held on		
- Leases of over 50 years	$ 66,413,516	$ 67,807,736

5 Property, plant and equipment

	Building	Leasehold Improvements	Office Furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:							
At 1 April 2006	$ 16,800,000	$ 11,160,680	$ 4,461	$ 160,651	$ 101,847	$ 1	$ 28,227,640
Price adjustment (Note)	-	388,400	-	-	-	-	388,400
Additions	-	-	6,910	20,666	953,855	-	981,431
At 31 March 2007	$ 16,800,000	$ 11,549,080	$ 11,371	$ 181,317	$ 1,055,702	$ 1	$ 29,597,471
Accumulated Depreciation:							
At 1 April 2006	$ 1,702,438	$ 3,969,526	$ 42	$ 10,605	$ 12,064	$ -	$ 5,694,675
Depreciation	420,000	1,293,455	1,358	33,818	84,832	-	1,833,463
At 31 March 2007	$ 2,122,438	$ 5,262,981	$ 1,400	$ 44,423	$ 96,896	$ -	$ 7,528,138
Net Book Value:							
At 31 March 2007	$ 14,677,562	$ 6,286,099	$ 9,971	$ 136,894	$ 958,806	$ 1	$ 22,069,333

	Building	Leasehold Improvements	Office Furniture	Office equipment	Computer equipment	Motor vehicles	Total
Cost:							
At 1 April 2007	$ 16,800,000	$ 11,549,080	$ 11,371	$ 181,317	$ 1,055,702	$ 1	$ 29,597,471
Additions	-	-	60,452	331,214	470,513	-	862,179
At 31 March 2008	$ 16,800,000	$ 11,549,080	$ 71,823	$ 512,531	$ 1,526,215	$ 1	$ 30,459,650
Accumulated Depreciation:							
At 1 April 2007	$ 2,122,438	$ 5,262,981	$ 1,400	$ 44,423	$ 96,896	$ -	$ 7,528,138
Depreciation	420,000	1,154,908	6,863	54,478	296,666	-	1,932,915
At 31 March 2008	$ 2,542,438	$ 6,417,889	$ 8,263	$ 98,901	$ 393,562	$ -	$ 9,461,053
Net Book Value:							
At 31 March 2008	$ 14,257,562	$ 5,131,191	$ 63,560	$ 413,630	$ 1,132,653	$ 1	$ 20,998,597

Note: During the year ended 31 March 2007, the costs incurred for leasehold improvements were finalised between the supplier and the Government. Accordingly, The Ombudsman, by reference to the costs finalised by the Architectural Services Department of Government, has made a price adjustment to reflect revised costs.

6 Cash and cash equivalents

	2008	*2007*
Cash at bank	$ 4,338,179	$ 5,220,844
Cash in hand	5,000	5,000
	$ 4,343,179	$ 5,225,844

7 Government subventions

The amounts represent the funds granted by the Government for prepaid operating lease payments, the purchase of buildings and certain leasehold improvements. Subvention income is recognised on a straight line basis over the period of the lease term or the useful life of the assets, which are estimated to be 54 years, 40 years and 10 years, respectively.

	2008	*2007*
Government subventions	$ 85,772,521	$ 88,737,561
Current portion of government subventions	(2,965,044)	(2,969,128)
	$ 82,807,477	$ 85,768,433

8 Contract gratuity payable

The amount represents the gratuity payable to staff on expiry of their employment contract. The amount of gratuity ranges from 10% to 25% of the basic salary less employer's contributions to Mandatory Provident Fund.

9 Operating expenses

	2008	*2007*
Auditor's remuneration	$ 42,000	$ 41,000
Amortisation of prepaid operating lease	1,394,220	1,394,220
Depreciation of property, plant and equipment	1,932,915	1,833,463
Employee benefit expense (Note 10)	54,766,024	46,614,281
Announcement of public interest expense	2,376,627	3,005,195
Operating lease rentals in respect of parking spaces	91,200	91,200
Rates and management fee	1,887,727	1,842,937
Other expenses	3,126,673	2,998,180
Total	$ 65,617,386	$ 57,820,476

10 Employee benefit expense

	2008	2007
Salaries and allowances	$ 47,685,656	$ 40,324,764
Contract gratuity	4,999,970	4,568,018
Pension costs - MPF scheme	1,008,457	870,589
Unutilised annual leave	274,849	179,210
Other employee benefit expenses	797,092	671,700
	$ 54,766,024	$ 46,614,281

11 Key management compensation

	2008	2007
Short-term employee benefits	$ 10,908,063	$ 9,917,207
Post-employment benefits	1,485,201	1,450,670
	$ 12,393,264	$ 11,367,877

12 Taxation

The Ombudsman is exempt from taxation in respect of the Inland Revenue Ordinance in accordance with the Schedule 1A Section 5(1) of the Ombudsman Ordinance.

13 Commitments under operating leases

At 31 March, the total future aggregate minimum lease payments under non-cancellable operating leases in respect of parking spaces are payable as follows:

	2008	2007
Within 1 year	$ 7,600	$ 7,600

14 Management of accumulated funds

The Ombudsman's primary objectives when managing its accumulated funds are to safeguard The Ombudsman's ability to continue as a going concern. The Ombudsman is not subject to externally imposed requirements relating to its accumulated funds.

15 Financial instruments

Risk management is carried out by the accounting department under policies approved by The Ombudsman. The accounting department identifies and evaluates financial risks in close co-operation with the operating units. The Ombudsman provides written principles for overall risk management such as interest-rate risk, use of financial instruments and investing excess liquidity.

The Ombudsman's activities do not expose it to foreign exchange risk, credit risk and liquidity risk. For interest-rate risk, except for the short-term bank deposits which bear interest at market rates, The Ombudsman has no other significant interest-bearing assets and liabilities. Accordingly, The Ombudsman's income and operating cash flows are substantially independent of changes in market interest rates and the exposure to cash flow and fair value interest rate risk is low.

Sensitivity analysis on interest rate risk

At 31 March 2008, it is estimated that a general increase/decrease of 100 basis points in interest rates, with all other variables held constant, would increase/decrease. The Ombudsman's income and accumulated funds by approximately $2,242,000 (2007: $1,929,000).

The sensitivity analysis above has been determined assuming that the change in interest rates had occurred at the balance sheet date and had been applied to the exposure to interest rate risk for both derivative and non-derivative financial instruments in existence at that date. The 100 basis point increase or decrease represents management's assessment of a reasonably possible change in interest rates over the period until the next annual balance sheet date. The analysis is performed on the same basis for 2007.

All financial instruments are carried at amounts not materially different from their fair values as at 31 March 2008 and 2007.

16 Possible impact of amendments, new standards and interpretations issued but not yet effective for the year ended 31 March 2008

Up to the date of issue of these financial statements, the HKICPA has issued a number of amendments, new standards and interpretations which are not yet effective for the year ended 31 March 2008 and which have not been adopted in these financial statements.

The Ombudsman is in the process of making an assessment of what the impact of these amendments, new standards and new interpretations is expected to be in the period of initial application. So far it has concluded that the adoption of them is unlikely to have a significant impact on The Ombudsman's results of operations and financial position.

History in Brief

Date	Event
1988	
20 July	The Commissioner for Administrative Complaints ("COMAC") Bill was passed by the Legislative Council ("LegCo")
1989	
1 February	The COMAC Ordinance was enacted
	First Commissioner Mr Arthur Garcia, JP assumed office
1 March	The Office of COMAC became operational with staff seconded from Government
15 November	COMAC became a member of the International Ombudsman Institute
1993	
21 July	Legislative review completed, the COMAC (Amendment) Bill was introduced into LegCo
1994	
1 February	Second Commissioner Mr Andrew So, JP assumed office
24 June	The COMAC Ordinance was amended: • to enable the public to lodge complaints directly, instead of by referral from LegCo Members • to extend the jurisdiction to some major statutory bodies • to empower the Commissioner to publish anonymised investigation reports • to empower the Commissioner to initiate direct investigation
30 June	Advisers were appointed to provide expert advice and professional opinion
1 July	Chinese title of the Commissioner was changed to「申訴專員」and the Office to「申訴專員公署」
1995	
1 March	Jurisdiction was extended to investigation into alleged breach of Code on Access to Information
24-26 October	The Commissioner hosted the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium

History in Brief

Date	Event
1996	
1 March	Non-official Justices of the Peace (JPs) were enlisted in a JPs Assistance Scheme
16 April	The Ombudsman's Office participated in the establishment of the Asian Ombudsman Association and became a founding member
12-13 June	First Complaint Management Workshop for public officers was organised
5 September	Resource Centre was opened
24 October	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute
27 December	English titles were changed to "The Ombudsman" and "Office of The Ombudsman"
1997	
1 April	Mediation service was launched as an alternative dispute resolution method
25 July	The Ombudsman's Awards were introduced to acknowledge public organisations handling complaints positively
1998	
8 May	The Ombudsman was elected Secretary of the Asian Ombudsman Association
1999	
1 April	Third Ombudsman Ms Alice Tai, JP assumed office
22 July	The Ombudsman's Awards were extended to acknowledge public officers' contribution towards better quality services
2000	
27 July	The Ombudsman's Awards were further extended to acknowledge public officers handling complaints professionally
2 November	The Ombudsman was elected to the Board of Directors of the International Ombudsman Institute

History in Brief

Date	Event
2001	
28 March	Telephone complaint service was introduced
19 December	The Ombudsman (Amendment) Ordinance 2001 came into operation: • to establish The Ombudsman as a corporation sole with full powers to conduct financial and administrative matters • to empower The Ombudsman to set terms and conditions of appointment for staff • to adopt systems and processes separate from Government
2002	
6 September	Office moved to permanent accommodation at Shun Tak Centre in Sheung Wan
16 October	The Ombudsman was elected Secretary of the International Ombudsman Institute
2003	
November	Training in mediation was provided for public officers to promote such service among public organisations
2004	
1 April	Ms Alice Tai, JP started her second term (2004 – 2009) as The Ombudsman
10 September	The Ombudsman was re-elected as Secretary of the International Ombudsman Institute
13 December	With the departure of the last civil service secondee, this Office was staffed by a workforce entirely appointed by The Ombudsman under The Ombudsman Ordinance
2005	
24 October	A "Memorandum of Administrative Arrangements" was signed between the Director of Administration and The Ombudsman to set out the general principles and guidelines governing the administrative arrangements for this Office
28 November – 1 December	The Ombudsman hosted the 9th Asian Ombudsman Association Conference

The Ombudsman's Review



This review marks the end of my ninth year as Ombudsman. I will reflect on some areas of concern and public interest.

Access to Information

Since 1995, Government's Code on Access to Information ("the Code") has been in force as an administrative guide to Government departments in their pursuit of open and transparent government. The objective of the Code is to make available as much information as possible to the public, unless there are valid reasons – related to public, private or commercial interests – not to do so. While complaints about non-compliance or misapplication of the Code have not been particularly numerous (15 in 2007/08), some cases have brought into sharp focus signs of misunderstanding, or even ignorance, of the Code among Government departments.

In several cases, the departments refused requests for information, either without providing any reason or with reasons not specified in the Code. In one or two cases, even the Access to Information Officer showed utter ignorance about the provisions of the Code.

The Code is the principal safeguard against improper withholding of Government-held information from the public. It is, therefore, of paramount importance that all departments are conversant with its provisions. We have drawn the attention of the Administration to the ignorance or lack of understanding of the Code among some civil servants and urged for promotion of awareness and more extensive training.

Conflicting Policies

I applaud the Administration for introducing legislation against unsolicited electronic messages to control the rampant sending of "junk" messages by telephone, fax or email. However, similar protection is not available against non-electronic "junk" mail. The Hongkong Post Circular Service delivers unaddressed circular mail, largely commercial advertisements, on a massive scale, which many recipients find annoying. This is an incident

which clearly suggests that Government's right hand is working in contradiction to its left. I, therefore, urge the Administration to examine this anomaly.

Lack of Monitoring Mechanism

A case about illegal burial in the New Territories revealed that Government has a policy of generally allowing refurbishment or reconstruction of graves built before a certain date. However, not having surveyed such graves at the time, the authorities have difficulty ascertaining whether a grave is new and illegally constructed or old but refurbished or reconstructed, as allowed under the policy.

This case illustrates the importance of having a proper mechanism to monitor the implementation of any policy. The Administration should take reference and avoid similar pitfalls.

Lack of Coordination

In my report for 2005/06, I commented at length on the issue of lack of coordination among Government departments in taking enforcement action, particularly in abatement of environmental nuisances – a reflection of the absence of legislation, policy or *esprit de corps* among the departments concerned to tackle such nuisances specifically and fully. The situation has not improved much in the last couple of years. I have, therefore, initiated two direct investigations, in July and November 2007 respectively, into how departments operate to deal with the long-standing issues of water seepage complaints and street management (including the proliferation of promotional activities on busy streets).

I maintain the view that departments must take on a broader prospective: however many departments may be involved, it is still just one and the same Government to members of the public. Such buck-passing among departments can only give the public an impression that they are shirking their responsibilities. In the final analysis, this will undermine Government's credibility.

Quality of Service vs Availability of Resources

From time to time, Government departments are found unable to meet public demand for essential services, notably telephone enquiry service, as a result of staff shortage. Of course, I appreciate the need for economy, especially in times of financial constraint. However, the Administration should not overlook or underestimate

the importance of support for such key "front-line" customer services. Here, let me quote Ms Ann Abraham, Parliamentary and Health Service Ombudsman of UK: "All public bodies must, and should, spend public money with care. However, finite resources should not be used as an excuse for poor service or administration."

Requirement of *Prima Facie* Case

Occasionally, complainants are dissatisfied with my decision not to take up their case. My reason is simply that we need, first and foremost, to ascertain whether there is a *prima facie* case to warrant investigation. Complainants must give such basic facts as the organisation and the matter for grievance, details of time and any persons involved. I cannot help complainants who are economical or reticent with the facts. It is not the function or practice of my Office to go witch-hunting on empty allegations.

Jurisdictional Review

I have completed the review of my jurisdiction and forwarded proposals to the Administration. In Part One of my review which was submitted to The Administration in November 2006, I have re-examined the criteria for including public bodies in The Ombudsman's purview and recommended a few additions. I have also revisited the legislative intent for some of the restrictions on investigative powers. The Administration is still studying my recommendations and consulting relevant parties and the Legislative Council.

I have also presented to the Administration my Part Two report in November 2007, devoted to surveying trends for development in ombudsmanship worldwide and the implications those could have on the ombudsman system in Hong Kong.

Hopefully, this would set the scene for possible changes in the years to come and contribute to more comprehensive and successful operation by future Ombudsmen.

Chapter 1
Functions and Jurisdiction

1.1 Established by The Ombudsman Ordinance ("the Ordinance"), Cap 397 of the Laws of Hong Kong, the Office of The Ombudsman is the city's independent watchdog of public administration. It investigates actions by Government departments and public bodies for administrative deficiencies and recommends remedial measures. In this context, it fosters good public administration that is fair, open, accountable and responsive.

Jurisdiction

1.2 The Ombudsman has powers to investigate complaints of maladministration by Government departments and public bodies listed in Part I of Schedule 1 to the Ordinance (see **Annex 1**). The Ombudsman may also, in the absence of complaints, initiate direct investigation into significant issues and areas of systemic maladministration.

1.3 Broadly speaking, "maladministration" means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for others.

1.4 The Hong Kong Police Force, the Independent Commission Against Corruption and three other organisations in Part II of Schedule 1 to the Ordinance (see **Annex 1**) are not subject to investigation, except for cases of non-compliance with the Code on Access to Information[1].

[1] The Code was introduced in 1995 to make available as much Government-held information as possible to the public, unless there are valid reasons – related to public, private or commercial interests – to withhold it. It applies to all Government departments, the Independent Commission Against Corruption and the Hong Kong Monetary Authority.

Actions Not for Investigation

1.5 The Ombudsman's purview is not without prohibition. Cases related *inter alia* to legal proceedings or prosecution decisions, contractual and other commercial transactions, personnel matters and imposition or variation of conditions of land grant are out of bounds. A full list of such prohibitions is at **Annex 2**.

Restrictions

1.6 The Ordinance also prescribes other circumstances under which The Ombudsman shall not conduct an investigation: for example, the complainant has had knowledge of the subject of complaint for over two years, is anonymous, or is not the person aggrieved or a suitable representative of that person. Such restrictions are detailed at **Annex 2**.

1.7 Nevertheless, in some cases, The Ombudsman may exercise discretion whether or not to conduct, or to discontinue, an investigation. A case may be taken up, for instance, if the complainant is able to explain satisfactorily why the complaint could not have been lodged within two years.

Jurisdictional Review

1.8 Our office has in the past two years conducted a comprehensive review of our jurisdiction. Details are given in **paras. 4.26 – 4.27** of Chapter 4.

Chapter 2
Investigation Procedures and Practices

Complaint Handling

Modes of Complaint

2.1 Complaints may be lodged in person, by letter, by post or by fax, or on our postage-free complaint form. They may also be made by telephone for simple initial cases involving not more than two organisations.



2.2 We also accept complaints via email. However, unless they are digitally signed under proper electronic certification, we have to respond by post to ensure security of the information, as required by the secrecy provision in section 15 of the Ordinance.



Assessment

2.3 Our Assessment Team vets all incoming complaints to ascertain whether they come within the statutory purview of The Ombudsman and whether they have a *prima facie* case to warrant investigation. Essential elements include such information as the organisation and the matter under complaint, basic details of time and persons involved as well as reasons for grievance.

2.4 Where The Ombudsman decides not to pursue a case, we aim to notify complainants within 15 working days (see **Annex 3** for our performance pledges). For complaints "screened out" because the complainants are anonymous or unidentifiable, we do not discard them but examine them for any pattern of systemic or systematic maladministration. This may at times prompt topics for direct investigation (see **paras. 2.13 – 2.18**).



2.5 Complaints "screened in" go to one of our five investigation teams for preliminary inquiries, resolution by mediation, or investigation.



Preliminary Inquiries

2.6 We often conduct preliminary inquiries before determining whether a full investigation is necessary. Such inquiries may come under our Internal Complaint Handling Programme ("INCH") or take the form of Rendering Assistance/ Clarification ("RAC"), as outlined in **Fig. 2.1**.



Mediation

2.7 With the voluntary consent of both the complainant and the organisation concerned, The Ombudsman may try to settle cases by mediation. This alternative dispute resolution method is suitable for cases involving only minor or no maladministration. The two parties meet to explore a mutually acceptable solution to the matter under complaint, with our trained investigators acting as objective mediators.

2.8 If mediation fails to resolve the matter, or the complainant requests to reactivate his complaint, our Office will assign another investigator to initiate preliminary inquiries or a full investigation.

Full Investigation

2.9 For complex cases involving issues of principle, serious maladministration, gross injustice, systemic flaws or procedural deficiencies, The Ombudsman will order a full investigation.

2.10 This involves extensive and intensive probing for evidence. Apart from examining documents, we may summon witnesses, counter-check data with the complainant and go on site inspections. Where necessary, we will consult members of our Panel of

Fig. 2.1

Preliminary Inquiries	
Type	**Method**
INCH	With the complainant's consent, a relatively simple case is referred to the organisation concerned for investigation and reply direct to the complainant, with a copy to us. The Ombudsman may request specific information from the organisation, monitors progress and scrutinises the reply, intervening where it is not satisfactory. In this event, we may take up the case by RAC or full investigation.
RAC	The Office collects key facts relating to the case. If the facts fully explain the matter under complaint, we will present the findings with observations to the complainant and suggestions to the organisation concerned for remedy and improvement, where appropriate. If further inquiries are called for, we may conduct a full investigation (see **para. 2.9**).

Professional Advisers, who are all experts with good standing in professional fields (see **Annex 4**).

2.11 When we have completed an investigation, we will invite comments on our draft report from the organisation(s) concerned and any individual(s) criticised or adversely affected. When finalised, the report will be presented to the complainant for information and to the head(s) of the organisation(s) for implementation of our recommendations.

2.12 In our investigation reports, complaints are classified according to how far the allegations of maladministration are well founded: "substantiated", "partially substantiated" or "not substantiated". In some cases, although the specific allegations in the complaint are not substantiated, other significant acts or aspects of maladministration are identified. These are then classified as "substantiated other than alleged". The different categories of outcome are defined in the **Glossary of Terms** (see **Annex 5**).

Direct Investigation

2.13 Under the Ordinance, direct investigations ("DI") in the absence of complaints enable The Ombudsman to review matters of moment at a macro level, as opposed to individual cases. Essentially, this means examining systems with systemic or widespread deficiencies.

Selection of Issues

2.14 A DI may be prompted by significant topical issues of community concern, implementation of new or revised Government policies or repeated complaints of particular matters. These include cases which may have been "screened out" during our assessment process but which show some pattern of systemic problems or systematic maladministration (see **para. 2.4**).

DI Assessment

2.15 Before we formally launch a DI, we may conduct an initial assessment ("DI assessment"). For this purpose, we research public information from annual reports and websites, legislation and media reports, as well as information from the organisation(s) direct. If such assessment points to the need for further study, we will formally notify the head(s) of the organisation(s) and initiate a DI.

2.16 Where our DI assessment finds no significant maladministration or proactive improvement has been made by the organisation(s) concerned, we will not initiate a DI. We will simply conclude it as a "mini-DI" and offer our findings to the organisation(s) for comments. Such report outlines the background to the issue, an appraisal of public concern, together with our observations on the role and the action of the organisation(s) concerned. Where appropriate, we make recommendations for improvement.

Investigation Methodology

2.17 The procedures for DI are akin to those for investigation into individual complaints. Unlike the latter, however, it is our established practice to declare publicly our initiation of DIs and invite views from relevant sectors and experts as well as the community at large. Findings are then announced at

media conferences. This is justified as the subjects are invariably of public interest. Such reports form part of the library stock in our Resource Centre (see **Chapter 6**).



2.18 In the course of our investigation, we often discuss the issues and the preliminary draft face-to-face with senior officers of the organisation(s). Such liaison sessions are useful in clarifying points for incorporation into our report.

Implementation of Recommendations

2.19 In all our reports, whether on complaint investigation or DI, our recommendations to the organisation(s) concerned aim to make for more open and client-oriented service, transparent and accountable processes and practices. However, where policies are found outdated or inequitable, The Ombudsman may also offer some comments, even though they are generally not matters for our investigation.

2.20 Heads of organisations have a duty to report at regular intervals their progress of implementation. We will monitor and keep track by correspondence.

2.21 Unlike Court verdicts, The Ombudsman's recommendations are not binding. Nevertheless, where the head of the organisation disagrees with her findings or refuses to accept her recommendations, The Ombudsman may submit a report to the Chief Executive of the Hong Kong Special Administrative Region. Similarly, where an organisation fails to implement or to act adequately on any recommendation, The Ombudsman may also report to the Chief Executive. In such event, the Ordinance requires that a copy of the report be laid before the Legislative Council within one month or such longer period as the Chief Executive may determine.

Secrecy Requirement and Publication of Reports

2.22 The Ombudsman, her staff and the Advisers are all bound by law, under penalty of a fine and imprisonment, to maintain secrecy in respect of all matters that come to our knowledge in the exercise and execution of our functions. This is to ensure that any person or organisation providing information to our Office can do so without reserve or fear of reprisal from the disclosure of their identity or related data.

2.23 It is our firmly established practice not to respond to any enquiry from third parties on individual complaints. However, The Ombudsman may publish anonymised reports on complaint investigation, where she considers that it is in the public interest to do so.

Chapter 3
Performance and Results

Enquiries and Complaints Processing

3.1 The number of enquiries and complaints received this year dropped slightly from last year's record high. Enquiries totalling 12,169 were comparable to the level three or four years ago. Complaints stood at 4,987, significantly higher than those years.

Fig. 3.1 Enquiry Counter



3.2 As always, the number of complaints fluctuated, surging when there were issues attracting public attention or affecting a section of the community. Last year I reported two major issues of public concern: namely, Typhoon Prapiroon and the Broadcasting Authority's criticism of a Radio Television Hong Kong programme, resulting in a combined total of over 1,500 complaints, mostly by email. This year, a number of issues also gave rise to group complaints, many with almost identical contents, a feature common with most group complaints:

- In May 2007, certain articles in a university students' newsletter were determined as indecent by the Obscene Articles Tribunal. This resulted in over three hundred complaints against the decision of the Television and Entertainment Licensing Authority ("T & ELA") not to submit the Bible to the Tribunal for classification;

Fig. 3.2

Enquiries and Complaints Received

Year	Enquiries	Complaints	
		only for us[1]	including those copied to us
2003/04	12,552	3,859	4,661
2004/05	11,742	3,802	4,654
2005/06	14,633	3,828	4,266
2006/07	15,626	5,606	6,114
2007/08	12,169	4,987	5,419

[1] These figures exclude "complaints to others copied to us" : see Glossary of Terms in **Annex 5**. It was termed "potential complaints" before 2006/07.



- In November 2007, over 200 owners of a Home Ownership Scheme housing estate lodged a group complaint against the Housing Department ("HD") and Lands Department ("Lands D") over the issue of management responsibility for a footbridge linking their housing estate and another opposite. In February 2008, a group of over 500 owners of the latter housing estate lodged a related complaint against the department;

- In December 2007, the decision of the Leisure and Cultural Services Department ("LCSD") to give priority to first timers in registering for certain sports training course resulted in 85 complaints from existing members of such courses.

3.3 Although not all of them turned out to be justified, they took up considerable staff resources.

3.4 Our publicity activities invariably impact on our caseload. Following the launch of our publicity programme in February/March (see **para. 6.2** in Chapter 6), coupled with the announcement of the results of our direct investigations about that time (see **Fig. 3.8**), we received 481 cases in March 2008, compared with the annual average of 416.

3.5 Group complaints can significantly change the overall pattern of complaints received. While such complaints usually come through email, those affecting a neighbourhood community tend to be letters by post. The 700 odd complaints against the Housing Department received this year referred to in **para. 3.2** all came in by letter through the post, making it the most used mode of lodging complaints for the year.

3.6 During the year we handled 5,929 cases and concluded 4,644. Among the latter, 1,246 (26.8%) were screened out because they were

Fig. 3.3

Mode of Lodging Complaints

Mode	2003/04	2004/05	2005/06	2006/07	2007/08
In person	324	396	231	412	251
In writing –					
by complaint form	722	934	613	586	486
by letter through post	1,634	1,599	1,303	1,002	1,829
by fax	972	615	863	836	753
by email	742	821	902	2,461	1,380
By telephone	267	289	354	309	288
TOTAL	**4,661**	**4,654**	**4,266**	**5,606**	**4,987**

under restrictions by law or were actually outside our jurisdiction (see **Chapter 1**); and 1,421 (30.6%) not pursued because they were withdrawn by the complainant, not undertaken because further inquiry was considered unnecessary or discontinued by our Office after initial inquiry.

3.7 I may consider further inquiry into a case unnecessary for a number of reasons, including:

- a *prima facie* case of maladministraton is not established;
- the complainant is merely expressing opinions or seeking general assistance;
- the complainant has refused to consent to disclosure of personal data necessary for initiating our inquiries;
- the organisation concerned is already taking action on the matter; or
- there is another authority for the matter.

3.8 The remaining 1,977 cases (42.6%) were screened in for further processing. Most of them, 1,857 cases (93.9%), were handled by way of Rendering Assistance and Clarification ("RAC").

3.9 As noted in my last report, starting from last year, complaints addressed to other organisations and only copied to us with no request for our action do not count as complaints to our Office and are excluded from our statistics. These complaints are identified as "complaints to others copied to us" (see **Annex 5**).

3.10 A breakdown of our caseload for the past five years is in **Table 1**.

Major Causes for Complaint

3.11 The five causes most mentioned by complainants this year were the same as last year:

- disparity in treatment, unfairness, selective enforcement;
- error, wrong decision/advice;
- failure to follow procedures, delay;
- negligence, omissions; and
- ineffective control,

The only difference is that "disparity in treatment, unfairness, selective enforcement" now topped the list (see **Fig. 3.5a**). The great increase in complaints in

Fig. 3.4

Complaints Screened in and Concluded

	2003/04	2004/05	2005/06	2006/07	2007/08
Preliminary Inquiries	1,834	1,873	1,758	1,643	1,938
INCH	203	209	185	143	81
RAC	1,631	1,664	1,573	1,500	1,857
Full Investigation	284	125	55	71	38
Mediation	7	6	12	2	1
Total	**2,125**	**2,004**	**1,825**	**1,716**	**1,977**



Fig. 3.5a

Causes for Complaint in the Last Three Years

Nature of alleged maladministration	% among all concluded cases@		
	2005/06	**2006/07**	**2007/08**
Disparity in treatment, unfairness, selective enforcement	7.3%	7.4%	25.4%
Error, wrong decision/advice	23.8%	46.5%	24.3%
Failure to follow procedures, delay	14.7%	11.0%	13.3%
Negligence, omissions	11.1%	8.0%	8.3%
Ineffective control	10.0%	6.5%	6.7%
Faulty procedures	4.8%	5.7%	5.4%
Lack of response to complaint	6.4%	5.0%	5.3%
Staff attitude	5.8%	4.7%	5.2%
Abuse of power	4.0%	3.2%	4.4%
Others	12.1%	2.0%	1.7%

@ The total number of cases concluded in 2005/06, 2006/07 and 2007/08 were: 4,309, 5,340 and 4,644 respectively. They included cases outside our jurisdiction, restricted or concluded after preliminary inquiries, mediation and full investigation (see **Table 1**). Figures for 2006/07 and 2007/08 exclude "complaints to others copied to us".

this category was attributable to the group complaints against HD, Lands D and T & ELA (see **para. 3.2**).

3.12 Based on cases for full investigation where alleged maladministration was substantiated, the top four types of maladministration were:

- error, wrong decision or advice; and
- failure to follow procedures, delay;
- lack of response to complaint; and
- disparity in treatment, unfairness, selective enforcement.

This year, "error, wrong decision or advice" replaced "failure to follow procedures, delay" as the act of maladministration most frequently substantiated. Details are shown in **Fig. 3.5b**.

Organisations Most Complained About

3.13 The list of organisations most complained about was also affected by group complaints. T & ELA, which used to attract few complaints, came third in the "top ten" list (see **Table 4**) this year as a result of the "Bible" group complaint referred to in **para. 3.2**. Likewise, LCSD, only marginally included in the list last year, moved up to the sixth place because of the group complaint related to registration for its training course. HD, while continuing to top

Fig. 3.5b

Forms of Maladministration Substantiated in the Last Three Years

Nature of maladministration identified	% among all acts of maladministration substantiated#		
	2005/06	2006/07	2007/08
Error, wrong decision/advice	13.9%	12.2%	29.1%
Failure to follow procedures, delay	30.6%	31.7%	16.1%
Lack of response to complaint	11.1%	17.1%	16.1%
Disparity in treatment, unfairness, selective enforcement	2.8%	2.4%	12.9%
Negligence, omissions	11.1%	9.8%	6.45%
Ineffective control	19.4%	14.6%	6.45%
Faulty procedures	5.6%	9.8%	6.45%
Staff attitude	2.8%	0%	6.45%
Abuse of power	2.8%	0%	0%
Others	0%	2.4%	0%

The total number of allegations substantiated, substantiated other than alleged or partially substantiated after full investigation in 2005/06, 2006/07 and 2007/08 were: 36, 41 and 31 respectively.

the list, had doubled the percentage of complaints, from last year's 12.4% to 24.7% this year, due to the group complaint about the management issues in two housing estates. Lands D was similarly affected, replacing the Food and Environmental Hygiene Department as the second organisation under complaint this year.



Outcome of Inquiries

3.14 We conducted full investigation on 38 complaints, with 23 or 60.5% substantiated, partially substantiated and substantiated other than alleged (see **para. 2.12** of Chapter 2), compared to 45.1% last year. The outcome of our full investigations is summarised in **Fig. 3.6**.

3.15 Complaints concluded after preliminary inquiries are not classified by their outcome. However,



Fig. 3.6

Substantiation Rates of Complaints Concluded by Full Investigation		
Classification	**No. of Complaints**	**Percentage**
Substantiated	9	23.69%
Partially substantiated	13	34.21%
Substantiated other than alleged	1	2.63%
Unsubstantiated	14	36.84%
Withdrawn/Discontinued	1	2.63%
Total	**38**	**100.0%**

Fig. 3.7

Outcome of RAC Cases		
Outcome	**No. of Complaints**	**Percentage**
Remedial action required	640	34.5%
No evidence of maladministration	1,200	64.6%
Inconclusive	17	0.9%
Total	**1,857**	**100.0%**

as shown in **Fig. 3.7**, among the 1,857 cases concluded by RAC, we required remedial action by the organisations concerned in 34.5% of the cases. This compares with 18.5% and 17.1% in the two previous years. **Table 8** gives more details.

Direct Investigation

3.16 We completed four direct investigations and two direct investigation assessments (or "mini-direct investigations") this year. Four direct investigations were in progress at the end of the year. Details follow in **Fig. 3.8**.

3.17 On completion of our direct investigations, we invariably make recommendations for improvement of administration (see **para. 3.19**). From time to time, improvement measures are introduced by the organisations on their own volition, at times even during our investigation. We welcome this as a positive and proactive move by Government.

Recommendations

3.18 Making recommendations, where due, to improve public administration in systems, procedures and practices is a key object of our inquiries, whether based on complaints or not. Our prime concern always is to redress grievances and enhance client service in the pubic sector.

Fig. 3.8

(a) Direct Investigation Reports Completed in 2007/08

Date	Subject
12 November 2007	Mechanism for Handling Conflict of Interests in Organisations Subvented by Leisure and Cultural Services Department
14 February 2008	Special Examination Arrangements for Students with Specific Learning Difficulties
13 March 2008	Alleged Overcharging of Water Bills
31 March 2008	Handling of Water Seepage Complaints

(b) Direct Investigation Assessments Completed in 2007/08

Date	Subject
16 November 2007	Management of Mortuaries in Hospitals under Hospital Authority
18 March 2008	Immigration Department Application Forms for Foreign Domestic Helpers

(c) Direct Investigations in Progress

Date Declared	Subject
5 July 2007	Effectiveness of the Integrated Call Centre in Handling Complaints
1 November 2007	Government Measures for Street Management
14 February 2008	Administration of Special Grants under Comprehensive Social Security Assistance
14 February 2008	Support for Students with Specific Learning Difficulties

3.19 During the year, I made 42 and 61 recommendations, i.e. a total of 103, on completion of the 38 cases concluded by full investigation and the four direct investigations respectively. So far, 98 (95.1%) of them have been accepted by the organisations for implementation and 5 (4.9 %) are still under consideration. None has been rejected.

3.20 For cases concluded by RAC, we also make suggestions for systemic improvement. This year, 237 such suggestions were made, compared with 208 last year and 218 the year before. A breakdown of these by organisations concerned is in **Table 8**.

Our Performance

3.21 Our performance pledges are detailed with our record of attainment in **Annex 3**. As in previous years, we continued to meet our pledges fully in respect of handling enquiries and arranging group visits and talks this year.



3.22 In processing complaints, we closely achieved our target time for acknowledging and completing initial assessment of complaints: 0.03% of the cases exceeded the target, and for processing cases outside jurisdiction or under restriction, 1.6% exceeded the target (see **Fig. 3.9(a) and (b)**).

3.23 For cases screened in for further processing, we could not meet our pledges fully because of the heavy caseload but were able to maintain a level comparable to previous years. The percentages of complaints concluded in three months and those over six months were 56.4% and 2.0% respectively, compared with 57.1% and 2.6% last year (see **Fig. 3.9(c)**).

Fig. 3.9

(a) Response Time for Acknowledgement/Initial Assessment

Year	Response Time		
	Within 5 working days (target : 80%)	**Within 6-10 working days (target : 20%)**	**More than 10 working days**
2003/04	66.2%	30.7%	3.1%
2004/05	94.0%	4.2%	1.8%
2005/06	99.75%	0.22%	0.03%
2006/07	99.90%	0.05%	0.05%
2007/08	99.91%	0.06%	0.03%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction

Year	Response Time		
	Within 10 working days (target : 70%)	**Within 11-15 working days (target : 30%)**	**More than 15 working days**
2003/04	71.5%	22.1%	6.4%
2004/05	62.6%	34.4%	3.0%
2005/06	40.9%	57.3%	1.8%
2006/07	90.9%	8.7%	0.4%
2007/08	88.1%	10.3%	1.6%

(c) Processing Time for Other Cases Concluded

Year	Response Time		
	Less than 3 months (target : 60%)	Within 3-6 months (target : 40%)	More than 6 months
2003/04	51.1 %	45.7%	3.2%
2004/05	43.3%	53.7%	3.0%
2005/06	56.0%	41.0%	3.0%
2006/07	57.1%	40.3%	2.6%
2007/08	56.4%	41.6%	2.0%

3.24 Longer processing time was necessary in some cases because of factors such as:

- complexity of the case;
- voluminous documents, initial and supplementary, from the complaint;
- new developments mid-stream;
- parties challenging our findings; and
- complainee organisations requiring more time for response to our inquiries.

Overview

3.25 Although the number of complaints received this year was slightly lower than last year's peak, it still stayed at a fairly high level. With the publicity programme launched towards the end of the year, we foresee another upsurge of cases in the beginning of the year ahead. Group action seemed to be a continuing trend. Such complaints are not only exercising our investigation resources, but also presenting a fresh challenge to our clerical and statistical support services. Thanks to the dedication of our staff, we have been able to cope with these challenges. At the same time, we exercise flexibility in staffing arrangements by internal redeployment and appointment of temporary investigators, also adjustment to our procedures, to attune to the changing demand for our services.

Chapter 4

Reward and Challenge

Enhancing Quality Administration

4.1 On conclusion of our investigations, I have the power to recommend improvement. I view this my public duty, to fulfill my role to enhance public administration. Before we finalise our recommendations, we will consult the organisations concerned by inviting their comments on our draft investigation reports in the case of full investigation. Even for cases processed by preliminary inquiries, we will also sound out the organisations before we firm up our suggestions. The object is to ensure that the measures we suggest are practical, realistic and reasonable.

4.2 As a rule, I do not recommend disciplinary action against staff of an organisation even where individual fault is established. Our role is to help improve systems and remedy processes, not to punish individuals. In any case, management and discipline are for the head of an organisation. Only in cases of blatant misconduct would I suggest consideration of disciplinary action by the organisation concerned.

4.3 This year, I made 103 recommendations after 38 full investigations and four direct investigations. I also put forward 237 suggestions in 1,857 cases concluded by RAC. Most of our recommendations and suggestions have been accepted by the organisations concerned (see **paras. 3.19 – 3.20** in Chapter 3). We monitor their implementation and review their progress. If the organisations concerned encounter genuine difficulties, say, because of unforeseen or changed circumstances, we will revisit the matter with them.

4.4 Every year, after The Ombudsman's Annual Report is tabled in the Legislative Council, the Administration submits a Government Minute to Honourable Members summarising the actions taken by the organisations concerned in implementing The Ombudsman's recommendations and suggestions.

4.5 The measures implemented by those organisations in response to our investigative work have resulted in visible improvement to public administration and services. These measures fall broadly into six areas:

(a) clearer guidelines for consistency or efficiency in operation;
(b) arrangements for more effective inter-departmental co-ordination;
(c) more efficient public enquiry and complaint handling;
(d) more client-friendly services;
(e) clearer information to the public; and
(f) training for staff.

4.6 **Annex 6** gives examples. These include new guidelines on taking food samples for laboratory testing, better coordination between departments in trying out temporary traffic arrangements; greater voice mailbox capacity for recording telephone enquiries; clearer instructions on marking schemes for public examination candidates and enhancement of staff understanding on processing of tenancy transfer cases.



Code on Access to Information

4.7 Last year I reported particularly on one aspect of my work related to the civil and political rights of citizens, namely, the citizen's right to access information held by the Administration. This right is recognised by Government in its Code on Access to Information ("the Code"): it requires Government departments to provide information they hold to the public upon request, unless there are valid reasons as specified in the Code not to do so. The accompanying "Guidelines for Departments" further requires that requests for information, even if not made specifically under the Code, should also be handled in the spirit of the Code. Under The Ombudsman Ordinance, I am charged with the responsibility to inquire into complaints of breach of the Code.

4.8 Public awareness of the existence of the Code is low but demand for access to information has been rising. This year, we received 15 related complaints (six last year) and concluded nine cases (two carried from last year). In handling these cases, we observed a lack of understanding of the Code among some Government departments. In several cases, the departments refused the requests either without providing any reasons or with reasons not specified in the Code. In other cases, the reasons cited for refusal showed obvious misunderstanding or serious misinterpretation of the Code. Particularly evident was a general lack of awareness that the spirit of the Code is for as open and transparent government as possible; and that information be given as much as practicable whether or not a request is made with specific reference to the Code. In one or two cases, even the Access to Information Officer displayed remarkable ignorance.

4.9 This is clearly not satisfactory or acceptable. The Code has been in force for over 11 years since 1996 and yet public knowledge of the Code remains so poor. Government must step up efforts to publicise the Code and to promote understanding, especially within the Civil Service.

Addressing Systemic Issues

4.10 Maladministration may just be isolated incidents resulting from mistakes by individual officers. However, at times, we see the same mistakes repeated and find them stemming from systemic defect. In concluding a case, we pay particular attention to whether the problems identified had appeared in more than one organisation or reflected more deep-rooted or general deficiencies within an organisation. Where they cannot be fully addressed or resolved on the basis of individual complaints, we draw them to the attention of the organisations concerned or the central Administration where justified. Where they require in-depth scrutiny, we conduct our own direct investigations even in the absence of complaints (see **paras. 2.13** of Chapter 2 and **3.16 – 3.17** of Chapter 3).

Water Seepage and the Joint Office

4.11 Water seepage has plagued many Hong Kong families for long, especially those living in aged multi-storey buildings. Every year, Government

receives hundreds of calls for assistance to deal with such problems. Our Office, in turn, regularly receives allegations of inaction in or poor handling of seepage cases. After a pilot initiated in December 2004, Government set up in mid-2006 a Joint Office with staff from the Buildings Department and the Food and Environmental Hygiene Department for a one-stop service, equipped with better technical know-how, to deal with seepage complaints territory-wide.

4.12 Despite good intentions, the initial operation of the Joint Office had many deficiencies and itself became the cause of a large number of complaints to our Office. This prompted us to initiate a direct investigation and we completed it in March this year. Apart from deficiencies in its procedures and practices, our investigation revealed several organisational defects. The Joint Office, despite its name, is loosely structured, void of a proper head with the necessary line of command and accountability. Furthermore, the exclusion of the Water Services Department ("WSD") made for difficulties in coordination and even cooperation. These problems came into sharp focus with WSD's reluctance to recognise the findings of Joint Office investigations and the disagreement among the three departments over who should take enforcement action and which Ordinance should be invoked. While we appreciate that they have some grounds for their stance, we cannot accept that such disagreement should be allowed to drag on, leaving families in frustration over their to-ing and fro-ing with the departments or in agony over the nuisance from seepage. Certainly, the public expect solution, one way or the other. If Government departments see no role for themselves on specific incidents, they should so inform the complainants clearly stating the reason(s) for their stance.

4.13 That said, it should be noted that maintenance of private buildings including seepage is the responsibility of the owners and should be resolved by the parties involved. Owners have a duty to keep their private property in good repair and the one causing the seepage has the onus to ascertain the cause and to rectify the problem.

Street Management and Coordination

4.14 The inadequate inter-departmental coordination shown in the Joint Office is even more vividly manifested in the handling of street management issues, another major source of public concern and irritation. In this connection, the most common problem is the unauthorised extension of business space by shops, hawker pitches and restaurants. Another feature, more frequently encountered in the New Territories, is the illegal parking of bicycles. Skips without permission to collect waste from building works or items for recycling are yet another on-street phenomenon. A newer street management issue is posed by retractable stands, often manned by aggressive sales persons.

4.15 Typically, these problems fall marginally within the jurisdiction of a cross-section of enforcement departments, with much grey area in determining the laws applicable. Consequently, no single department can effectively eliminate the problem on its own even



after repeated action. Meanwhile, the public views this as a measure of maladministration. Worse still, in some cases, the departments concerned chose to withhold action until consensus on responsibility could be reached.

4.16 To address these issues, we have declared a direct investigation into Government measures for street management. A few citizens have already responded to our appeal for information and given us their views.

Challenges from Parties

4.17 Under The Ombudsman Ordinance, my decisions on whether to undertake an inquiry and my conclusions on completion of inquiries are final. However, I am prepared to review my decisions and conclusions where new information or fresh perspectives are presented by complainants and accept challenge from public organisations. I take these as opportunities to re-examine our procedures and practices where due. We regularly remind ourselves to stay alert to the need, and the scope, for our own improvement.

Revived Cases

4.18 Complainants dissatisfied with our findings or conclusions may seek a review of their cases. We have specific procedures for handling "revived" cases. Invariably, they first go through the original investigator, who will examine the complainant's grounds for review and submit his or her view to the Chief Investigation Officer of the team. The latter will take a fresh look at the case, focusing on fresh evidence or new angles, if any, before submission of the request to the relevant Assistant Ombudsman for consideration. Requests for review are always scrutinised by my Deputy, before coming to me for determination and final approval.

4.19 This year, we received 310 requests for review, compared to 336 last year. I varied my decision after review in seven cases, compared with 11 last year.

4.20 Sometimes, a request for review is accompanied by a complaint against the case officer for alleged bias, insufficient thoroughness or poor conduct in their inquiries. Such request will first go to the head of my office administration to determine whether the allegations are against the conduct

Fig. 4.1

Revived Cases

Reason / Result	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	1		6			**7**
Decision upheld		289			14	**303**
						310

of my staff. If so, he will handle the complaint independently (see **paras. 5.17 – 5.20** of Chapter 5) and report his findings to me. However, most of the time, such allegations really arise from dissatisfaction with the findings or conclusions of our inquiries. As investigation findings are subject to my personal approval, such complaints are actually against my decisions, not my officers'. In such event, the request for review of the case will return to the original team Chief for reviewing the case as outlined above.

Judicial Review and Litigation

4.21 Apart from requesting review by The Ombudsman, individuals or organisations have recourse to the courts for judicial review of my decisions. This is a particularly significant provision both for the satisfaction of the complainants and for the integrity of my role and function since, in view of the statutory independence of The Ombudsman, my decision on a case is final.

4.22 During the year, in a case concerning the granting of Comprehensive Social and Security Assistance, the complainant applied for leave for judicial review against my decision. After consideration of the documents filed by the complainant, the High Court refused to grant leave.

4.23 Another complainant, in a case concerning the termination of tenancy regarding public housing, initiated civil proceedings against the case officer and an officer of the Housing Department. The case was struck out by the Court of First Instance after hearing.

Abuse of the Complaint System

4.24 Occasionally we see complainants "stretching" the complaint system to the point of abuse. In a number of cases, the complaints were lodged clearly for personal vendetta against business rivals, neighbours or other persons. In such cases, the complainants were attempting to use a Government authority either to put undue pressure on their rivals or to cause unnecessary inconvenience to them. When the authority refused to entertain such unfounded and unreasonable requests, the complainants then turned to complain against the authority.

4.25 In handling such complaints, we will firmly adhere to our fundamental value of maintaining impartiality and objectivity in investigation. Where warranted, we do not hesitate to comment on the complainants' behaviour. This has, on occasions, resulted in complaints and even abuse against our staff. However, for fairness and justice we remain firm in our mission and will always discharge our functions with professionalism, without fear or favour.

Jurisdictional Issues

Jurisdictional Review

4.26 Last year, I reported on completion of Part One of our jurisdictional review and presented my recommendations on organisations to be added to Schedule 1 to The Ombudsman Ordinance to place them within my purview; relaxing certain restrictions on my investigative powers in Schedule 2 to the Ordinance; and resolving some of the difficulties or uncertainties encountered by our officers in



discharging their duties.

4.27 During the year under report, I also completed Part Two of the review, which surveyed developments in ombudsmanship worldwide and examined their possible implications on our Office. I have also presented this part of my report to the Administration in November 2007.

Representation on Other Public Bodies

4.28 Since the setting up of the Independent Police Complaints Council ("IPCC"), The Ombudsman or his representative has been *ex officio* member of the Council. With the incident of the leakage of personal data relating to public complaints made against the Police and investigation of the matter by the Privacy Commissioner for Personal Data ("PCPD"), I raised doubts on the propriety of my continued participation in the work of IPCC. This was because PCPD is listed in Part I of Schedule 1 to The Ombudsman Ordinance and the IPCC Secretariat in Part II of the Schedule, which lists organisations subject to The Ombudsman's jurisdiction in the exercise of their functions relating to the Code on Access to Information. Both of them are, therefore, under my jurisdiction. To avoid any potential or perceived conflict of roles, I asked to be released from membership of IPCC. The Administration accepted my request in May 2007.

4.29 For years, there has been demand to establish IPCC as a statutory body, severing all ties with Government. In this connection, the Administration has long been preparing draft legislation. The data leakage incident and related developments heightened public awareness about the question of accountability of the IPCC Secretariat, and gave fresh impetus to demands for IPCC to sever links with the Administration. In June, the Administration gazetted the Independent Police Complaints Council Bill. The Bill contains a consequential amendment to remove the IPCC secretariat from Part II of Schedule 1 to The Ombudsman Ordinance. The Administration has explained that the amendment is necessary as the Code was introduced to ensure reasonable access to Government information and applies to Government departments only. Since the statutory IPCC will have its own staff, its Secretariat will no longer be a Government department. Given that the existing IPCC is not included in Part II of the Schedule, nor will the statutory IPCC, the Administration considers removing the IPCC Secretariat from the Schedule as a corollary to the establishment of the statutory IPCC.

4.30 I do not accept this argument. The proposed amendment will curtail the ambit of The Ombudsman Ordinance and is not logical or necessary. The Independent Commission Against Corruption, an independent statutory body and not a Government department or Government agency, is subject to the Code and in Part II of the Schedule to The Ombudsman Ordinance. I see no reason why the IPCC should be treated differently. I have conveyed these views to the Administration.

Overview

4.31 Our vision is to ensure that Hong Kong is served by a fair and efficient public administration.

To this end, we place great emphasis on identifying gaps and weaknesses in systems, procedures and practices in public administration and on recommending improvement. Our endeavours have borne fruits, as evidenced by the considerable improvement measures effected in many of the listed organisations.

4.32 The Administration has responded positively to our effort and always takes our views and recommendations seriously, implementing them faithfully. I sincerely appreciate this commitment of the Administration to good governance. On my part, I will continue to assist departments and public organisations in improving their services and support them in those endeavours.

Chapter 5
Office Administration

Staffing and Establishment

5.1 The community's growing awareness of citizen's rights to public and social services has resulted in a steady rise in complaints to this Office over the years. In 2006/07, the number topped 5,606 complaints.

5.2 To cope with the increased workload, we employed more temporary investigators than ever before to supplement our regular investigative workforce, both for complaint handling and for conducting direct investigations. The number of temporary investigators employed in 2007/08 equalled 1,171 man-days or 4.4 full time investigators.

5.3 As a long-term solution for easing the pressure on staff from casework, expanding our capacity for direct investigations and training staff for career development, we have reviewed our establishment. As a result, from 1 November 2007, we have revised the number of investigation teams from four to five and reinstated the DI team put to rest in 2002/03 due to funding constraint in the public sector. In this context, we recruited five full-time investigators as well as adjusted our manpower development. Our organisation since November is shown in **Fig 5.1**.

5.4 For succession planning, it has been my practice to recruit staff at the more junior ranks where appropriate, to groom the young and meritorious members for career advancement. This aims to strengthen their sense of commitment to service on the one hand and build up a team of competent and promising investigators for the long-term operation of the Office on the other.

5.5 On 31 March 2008, we had a total of 98 regular staff, eight more than last year.

Fig. 5.1 Organisational Structure

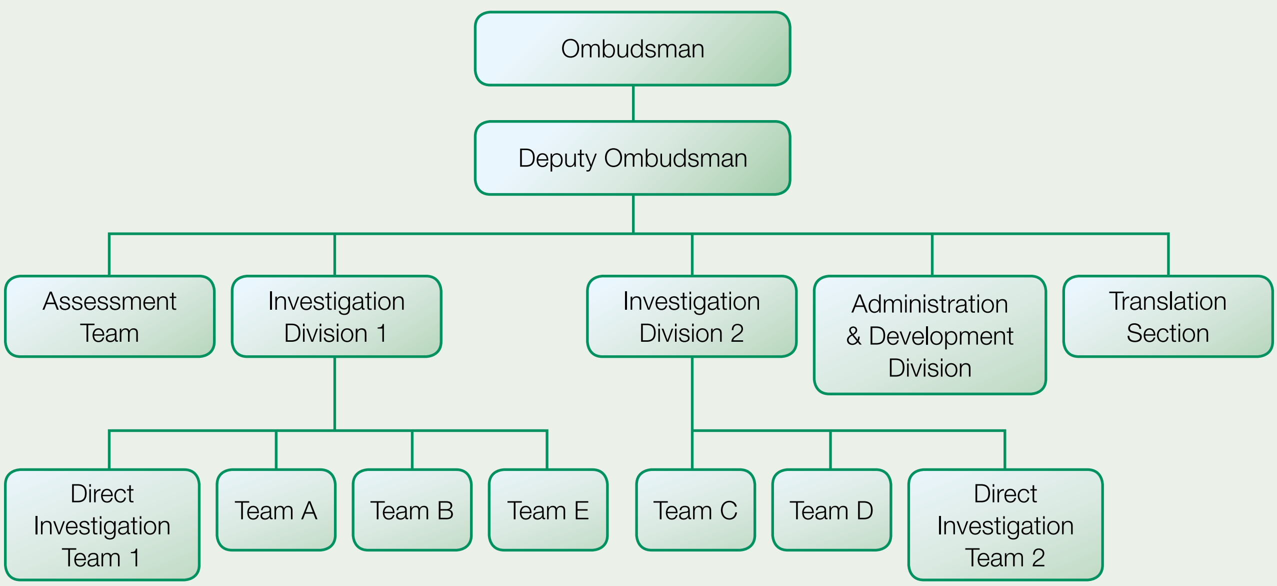




Fig. 5.2

Staffing Complement			
Breakdown of Staff	**As at 31.3.2006**	**As at 31.3.2007**	**As at 31.3.2008**
Directorate	4	4	4
Investigation	43	45	50
Administrative & Support	38	41	44
Total No. of Regular Staff	**85**	**90**	**98**
Temporary staff: equivalence to full-time posts (total man-days)	1.2 (353)	2.4 (698)	4.4 (1,171)
Grand Total	**86.2**	**92.4**	**102.4**

Salary Review

5.6 When we determined our salary structure upon delinking from Government systems and practices in 2001, we had lowered the entry salaries of most ranks by two to six points against those for comparable civil service ranks. The object was to keep salaries in line with prevailing market conditions at the time and to ensure long-term financial viability of the Office under the "one-line vote" subvention.

5.7 With the improved economic and employment situation, we need to enhance our competitiveness in recruitment and retention of quality staff. In this connection, we reviewed our salary level in mid-2007/08 in line with adjustments in the civil service and other public organisations. Apart from following the 2007/08 civil service pay revision, we also examined the entry salaries of non-directorate ranks and revised upwards by one to two points with effect from October 2007. This has narrowed the difference in salaries between our Office and the civil service.

5.8 Despite the revision, the remuneration for individual grades remains no better than those of comparable ranks in the civil service, in line with the practice for subvented organisations.

Staff Training

5.9 We continue to attach great importance to developing professionalism among our investigative staff in complaint management through training and experience sharing.

5.10 Apart from sponsoring them on courses of the Civil Service Training and Development Institute and arranging for in-house Putonghua training to better equip our staff for their work, we also commissioned an English training course for my investigators to sharpen their English writing skills. The result has been encouraging. In June 2007, we also invited the School of Continuing and Professional Studies of The Chinese University of Hong Kong to conduct a two-day course for my investigators for improvement of their presentation skills.

5.11 As before, we organised internal open forums during the year. These covered the following topics:

- Handling of complaints relating to the Code on Access to Information
- Work of the Audit Commission

5.12 For the second session, we are grateful to the Director of Audit for sending two of his senior staff to brief us on the role and operation of his Commission. This forum has helped to widen the outlook of my investigators by reference to another facet of investigation work focusing on management of resources and cost-effectiveness in operation.

Fig. 5.3 Open Forum



5.13 In addition to internal forums, we also organised a joint forum with the Equal Opportunities Commission ("EOC") and the Office of the Privacy Commissioner for Personal Data ("PCPD") on 17 March 2008, to share experience in complaint management and investigation. In the opening session, the heads of the organisations enlightened participants on the role of their organisations in providing redress to individuals with grievances.

5.14 The forum consisted of two parts. In the first part, we had fruitful exchanges on the mode of operation, delivery of service and techniques in customer service. In the second part, we had free and fresh discussions on operational issues of common concern and practices for mutual benefit. The topics included meeting complainants' expectations, management of personal information and resolution of possible conflict among the three organisations due to the statutory requirements for maintaining secrecy in and the collection or provision of information for investigation.

5.15 The consensus was that the forum had achieved the intended purpose and should continue to be run on a yearly basis. It has opened our minds to fresh aspects for cooperation and mutual understanding.

Fig. 5.4 Joint Forum with EOC and PCPD



5.16 Apart from these forums, we also hold experience sharing sessions as and when necessary to broaden the outlook of my investigators. An example was the session on the Office's official visit to Beijing, Dalian and Inner Mongolia in August 2007,



which was part of our annual Exchange Programme with the China Supervision Institute.

Complaints against the Office

5.17 This year, we processed a total of nine complaints against our Office.

5.18 Two of the complaints against our staff manners were partially substantiated. This underlines the needs for us to improve our approach to serving the public.

5.19 However, I have to emphasise that these complaints do not necessarily reflect on the performance of my staff or the quality of our inquiries. Often, they arise from dissatisfaction with my conclusions and decisions to their satisfaction in brief, I did not conclude their cases in their favour.

5.20 Nevertheless, we take every critical comment as an opportunity to review our practices afresh. We treasure the lessons learned and revise our systems and procedures to meet the rising public aspirations and growing demand for more efficient and effective services.

Fig. 5.5

Complaints against the Office concluded in 2007/08

Nature	Substantiated	Partially Substantiated	Unsubstantiated	Incapable of Determination
Staff manner (including delay and negligence)	-	2	3	2
Work systems and procedures	-	-	1	-
Both staff manner and work systems and procedures	-	-	1	-
Total	**9**			

Chapter 6

Publicity and Public Relations

6.1 This year, we attached greater importance to enhancing public understanding of our jurisdiction by organising talks for specific target groups while maintaining publicity on our role via multi-media. Meanwhile, we sustained our efforts on promoting a positive service culture among Government departments and public bodies by The Ombudsman's Awards, seminars and visits.

Promotion Campaign

6.2 Our Announcement of Public Interest ("API") flimclip was broadcast on TV, radio, buses and trains from late February to March 2008. Our aim was for our API to reinforce public awareness of our role and functions.

6.3 To compare the effectiveness of the different electronic media, we issue simple questionnaires for feedback from complainants during and right after the launch period. Their responses provide us with insight for mapping out our future strategy for publicity and public education.

Media Relations

6.4 To publicise our investigative work, we hold press conferences at regular intervals to announce investigations of community interest. This year, we have published the results of inquiries into two complaints and four direct investigations. We also declared the initiation of five direct investigations. Summaries of the investigation reports announced were released through *OmbudsNews*, our newsletter coinciding with our press conferences. These are also available on our website.

Fig. 6.1 API





Fig. 6.2 The Ombudsman in Press Conference



6.5 Media coverage helps to promote public awareness of our work. This not only updates information on what we have done on matters of public concern, but also brings out how we aim to improve public administration. In this connection, we thank complainants and complainee organisations, without those cooperation we could not fulfill our mission as effectively.

Public Information

6.6 This year, we have updated our "Complaint Form", "Publicity Leaflet" and "Performance Pledge" for clearer and correct information on our services. These publications are available in our Resource Centre, on our website and in District Offices of the Home Affairs Department.

Fig. 6.3

Press Conference/Public Announcement	
4 July 2007	• Publication of 19th Annual Report
5 July 2007	• Declaration of direct investigations into i. Government's arrangements for handling water seepage complaints ii. Effectiveness of the Integrated Call Centre in handling complaints
1 November 2007	• Announcement of findings of two anonymised investigation reports on complaints - i. No fore-warning on surcharge for overstaying in public housing unit ii. Inadequate disclosure to the Home Ownership Scheme purchasers on slope maintenance responsibility • Declaration of direct investigation into Government measures for street management
12 November 2007	• Announcement of findings of direct investigation on mechanism for handling conflict of interests in organisations subvented by the Leisure and Cultural Sevices Department
14 February 2008	• Announcement of findings of direct investigation on special examination arrangements for students with specific learning difficulties by the Education Bureau and Hong Kong Examinations and Assessment Authority • Declaration of direct investigations into i. the abuse of Comprehensive Social Security Assistance Scheme Special Grants ii. the support for students with specific learning difficulties
13 March 2008	• Announcement of findings of direct investigation on alleged overcharging of water bill by the Water Supplies Department
10 April 2008	• Announcement of findings of direct investigation on handling of water seepage complaints

Chapter 6
Publicity and Public Relations

Fig. 6.4 Publications of our Office



Resource Centre

6.7 Our Resource Centre is a mini-library of Ombudsman-related publications with a wealth of our *OmbudsNews*, video recordings and newsclips on our activities as well as periodicals from overseas ombudsman offices. It is open to all and often we arrange for groups to come and sample our stock.

6.8 Members of the public are welcome to visit our Resource Centre individually or in groups from youth and elderly centres, schools and other community organisations. Visitors are briefed by our staff on our role and functions and invited to give their views on our operation. Such visits are an important means to enhance public understanding of our Office and to glean feedback for our own improvement. In 2007/08, we had about 1,076 persons from 27 groups visiting our Office. This compares with 727 from 19 groups in 2006/07.

Fig. 6.5

Group Visit to Resource Centre

From	Groups	Visitors
Schools	10	361
Youth centres	4	160
Elderly centres	12	519
Others	1	36
Total	**27**	**1,076**

The Ombudsman's Awards

6.9 As before, efforts of public organisations and their officers exemplary in handling complaints and improving public administration were honoured with The Ombudsman's Awards. In October 2007, The Ombudsman presented the Awards to the Buildings Department (Grand Award), the Judiciary Administration and the Student Financial Assistance Agency and also 24 public officers. Over 150 representatives from more than 30 public organisations witnessed this proud occasion. We were particularly touched that some came with their family members.

Fig. 6.6 The Ombudsman's Awards Presentation Ceremony





Fig. 6.7

Winning Organisations for 2007
• Buildings Department (Grand Award)
• Judiciary Administration
• Student Financial Assistance Agency

Meeting with Departmental Directorate

6.10 With positive feedback in the past two years, I continued to meet with directorate officers of Government departments during the year to share with them my experience in complaint handling and to exchange views on issues of mutual concern in public administration and service delivery. The meeting with the directorate and senior staff of the Judiciary Administration in May 2007 was fruitful in strengthening communication over complaint handling and mutual understanding.

Seminars

6.11 We hold seminars from time to time to explain and promote the mission of The Ombudsman to different sectors. This year, new District Councillors have come into office. Given their role in district administration and their interface with the local community, we plan for a seminar to brief their assistants on our work and to seek their support for our services. The seminar is scheduled in April 2008 for around 60 participants.

6.12 In the meantime, I am ready to meet with the newly elected Chairmen of the 19 District Councils to reinforce our mutual interest in better public service for our community. The meeting is planned for early 2008/09.

Fig. 6.8

Individual Awards for 2007

Organisation	No. of Awardees
Architectural Services Department	1
Buildings Department	1
Civil Engineering and Development Department	1
Correctional Services Department	1
Customs and Excise Department	1
Department of Health	1
Drainage Services Department	1
Electrical and Mechanical Services Department	1
Environmental Protection Department	1
Food and Environmental Hygiene Department	1
Highways Department	1
Hospital Authority	1
Housing Department	1
Immigration Department	1
Inland Revenue Department	1
Intellectual Property Department	1
Land Registry	1
Legal Aid Department	1
Mandatory Provident Fund Schemes Authority	1
Post Office	1
Rating and Valuation Department	1
Securities and Futures Commission	1
Social Welfare Department	1
Water Supplies Department	1

Chapter 6
Publicity and Public Relations

Outreach Talks

6.13 Apart from receiving visitors, we also reach out to deliver talks to Government departments, schools, universities and centres for elderly persons. This year, we visited 10 departments and public organisations.

Meeting with Legislative Councillors

6.14 Each year, I attend before the Legislative Council ("LegCo") towards the end of the year. This year, the meeting was on 11 December 2007. I briefed members on my work and exchanged views with them on the operation of my office. They were concerned over my review of The Ombudsman's jurisdiction, completed and put to the Administration for consideration (see **paras. 4.26 - 4.27** of Chapter 4).

6.15 In response to Members' request, the Administration released Part 1 of my jurisdictional review to the LegCo Panel on Administration of Judicial and Legal Services.

Support from Justices of the Peace

6.16 Since 1996, non-official JPs have been enlisted to join our Justices of the Peace ("JPs") Assistance Scheme. They support us in promoting public awareness of the ombudsman system. We keep our JPs updated regularly on the operation of public services by organising visits for them to sample the services of the organisations on Schedule 1 to The Ombudsman Ordinance. During the year, we arranged for their first-hand experience at the Airport Authority and the Lai King Assessment Centre of the Hong Kong Examinations and Assessment Authority. As always, there was fruitful exchange on operational processes and service delivery issues.

Fig. 6.9 JPs' Visit to the Hong Kong Examinations and Assessment Authority



Institutional Liaison

6.17 As the Secretary of both the International Ombudsman Institute ("IOI") and the Asian Ombudsman Association ("AOA"), I participate actively in their activities, to maintain close contact with our counterparts worldwide. This year, I attended the AOA Board of Directors Meeting and AOA Conference in Vietnam in April 2007, and the IOI Board of Directors Meeting in Sydney, Australia in early November 2007 respectively. Later in March 2008, I joined the 24th Australasian and Pacific Ombudsman Region Conference in Melbourne, Australia.

6.18 These activities help my Office to keep abreast with developments of ombudsman systems. They also maintain Hong Kong's firm repute in the



international arena. It can also assist in strengthening China's links with the regional and international bodies.

6.19 I will be hosting the IOI Board of Directors Meeting in November 2008.

Exchange with the Mainland

6.20 In late August 2007, I led a delegation to the Mainland for a week-long study tour under the auspices of the China Supervision Institute. We had in-depth exchange of views, sharing experience on systems and practices for monitoring public administration with the officials in Beijing, Dalian and Inner Mongolia. These sessions gave my colleagues and me insight into Mainland operations while offering our counterparts in China a clearer understanding of our processes and pursuits.

Fig. 6.10 China Exchange Programme



6.21 We have continued to receive groups from the Mainland. They are briefed by my senior officers on our jurisdiction and *modus operandi,* free and wide-ranging exchange of views and ideas would invariably follow. This year, we gave talks to four groups comprising 116 participants. We welcome such gatherings as they offer opportunities for better understanding and mutual benefit.

Thematic Household Survey

6.22 From time to time, we collect community feedback by commissioning Government's Census and Statistics Department to conduct Thematic Household Surveys. Our aim is to gauge the complaint culture of the local community and ascertain public expectations of statutory complaint channels. The findings give us pointers to fine-tune our *modus operandi*.

6.23 The latest survey was conducted in June 2007. Over 8,000 households were interviewed. This survey indicated that 18.4% of the respondents, compared with 13.8% in the March 2003 survey, had an experience of lodging a complaint against some Government departments or public bodies for maladministration and The Ombudsman's Office was among the top three complaint channels of the public, only after complaint channel of the department/public body concerned and District Council/members of District Council. I am delighted to note that my power in conducting direct investigations had captured greater public awareness than before. The summary of findings is at **Annex 9**.

6.24 We take reference from public opinions and media comments for enhancement of services and preview of practices. We strive for continuing improvement for efficient and effective services in promoting fair and open government.

Annex 1
List of Scheduled Organisations

Organisations Listed in Part I of Schedule 1, Cap. 397

1. All Government departments/agencies except the Independent Commission Against Corruption, the Hong Kong Auxiliary Police Force, the Hong Kong Police Force, the Secretariat of the Independent Police Complaints Council and the Secretariat of the Public Service Commission
2. Airport Authority
3. Employees Retraining Board
4. Equal Opportunities Commission
5. Financial Reporting Council
6. Hong Kong Arts Development Council
7. Hong Kong Housing Authority
8. Hong Kong Housing Society
9. Hong Kong Monetary Authority
10. Hong Kong Sports Institute Limited
11. Hospital Authority
12. Kowloon-Canton Railway Corporation
13. Legislative Council Secretariat
14. Mandatory Provident Fund Schemes Authority
15. Privacy Commissioner for Personal Data
16. Securities and Futures Commission
17. The Hong Kong Examinations and Assessment Authority
18. Urban Renewal Authority
19. Vocational Training Council

Organisations Listed in Part II of Schedule 1, Cap. 397

1. Independent Commission Against Corruption
2. Hong Kong Auxiliary Police Force
3. Hong Kong Police Force
4. Secretariat of the Independent Police Complaints Council
5. Secretariat of the Public Service Commission

Annex 2

Circumstances Where Complaints are not Followed Up or Investigated

Actions not Subject to Investigation - Schedule 2, Cap. 397

1. Security, defence or international relations
2. Legal proceedings or prosecution decisions
3. Exercise of powers to pardon criminals
4. Contractual or other commercial transactions
5. Personnel matters
6. Grant of honours, awards or privileges by Government
7. Actions by the Chief Executive personally
8. Imposition or variation of conditions of land grant
9. Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
10. Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

Restrictions on Investigation of Complaints - section 10(1), Cap. 397

1. Complainant having knowledge of subject of complaint for more than two years
2. Complaint made anonymously
3. Complainant not identifiable or traceable
4. Complaint not made by person aggrieved or suitable representative
5. Subject of complaint and complainant having no connection with Hong Kong
6. Statutory right of appeal or remedy by way of legal proceedings (except judicial review) being available to complainant

Circumstances Where The Ombudsman may Decide not to Investigate - section 10(2), Cap. 397

1. Investigation of similar complaints before revealed no maladministration
2. Subject of complaint is trivial
3. Complaint is frivolous or vexatious or is not made in good faith
4. Investigation is, for any other reason, unnecessary

Annex 3

Achievement of Performance Pledge

(1 April 2007 to 31 March 2008)

(A) Enquiries*

	Response Time		
By telephone or in person	Immediate	Within 30 minutes	More than 30 minutes
	12,113 (100%)	0	0
In writing	Within 5 working days	Within 6-10 working days	More than 10 working days
	152 (100%)	0	0

* Excluding enquiries on existing complaints.

(B) Complaints**

	Response Time		
Initial assessment / acknowledgement	Within 5 working days (target: 80%)	Within 6-10 working days (target: 20%)	More than 10 working days
	3,377 (99.91%)	2 (0.06%)	1 (0.03%)

** Excluding complaints to others copied to us and cases outside jurisdiction or under restriction.

	Cases outside jurisdiction or under restriction			Other cases		
Cases concluded	Within 10 working days (target: 70%)	Within 11-15 working days (target: 30%)	More than 15 working days	Less than 3 months (target: 60%)	Within 3-6 months (target: 40%)	More than 6 months
	1,098 (88.12%)	128 (10.27%)	20 (1.61%)	1,916 (56.39%)	1,412 (41.55%)	70 (2.06%)

(C) Group visits and talks

	Response Time	
Requests for guided group visits	Within 5 working days	More than 5 working days
	32 (100%)	0
Requests for outreach talks	Within 10 working days	More than 10 working days
	20 (100%)	0

Annex 4
Panel of Professional Advisers

Advisers

Mr Brian G. BAILLIE

Mr Francis Shu-ying BONG

Mrs Anne R. CARVER

Professor Johannes M.M. CHAN

Professor T.K. CHAN

Mr Yan-kee CHENG

Mr Joseph Ming-kuen CHOW

Professor M.J.A. COORAY

Dr Raymond Chung-tai HO

Professor P.C. HO

Mr Anson Kam-choy KAN

Professor Kar-neng LAI

Mr Edmund Kwong-ho LEUNG

Dr Man-chiu LO

Professor Felice Lieh-MAK

Professor Dhirendra K. SRIVASTAVA

Mr Benny Y.T. TAI

Mr Vincent Kam-chuen TSE

Mr Chi-tin WAN

Mr Siu-kai WAN

Professor Gui-guo WANG

Dr Chung-kwong WONG

Professor John WONG

Professor C.Y. YEUNG

Mr Patrick Se-kit YUEN

* In alphabetical order

Annex 5

Glossary of Terms

Complaint

A complaint is a specific allegation of wrong doing, unreasonable action or defective decision which affects and aggrieves the complainant.

Complaint to Others Copied to Us

This is a complaint addressed to another organisation and copied to The Ombudsman with no request for action. It may become a complaint if The Ombudsman sees reasons to intervene.

Complaint Not Undertaken

This is a complaint which The Ombudsman has decided not to process further after considering all its circumstances, e.g. whether there is sufficient *prima facie* evidence of maladministration.

Direct Investigation ("DI")

This is an investigation initiated in the public interest even in the absence of complaint and generally on matters of a systemic nature or wide community concern.

Direct Investigation Assessment

This refers to the preliminary examination and assessment on a potential subject for direct investigation. It is dubbed a "mini direct investigation" where substantial information has been collected during the process and on completion of assessment, a fuller inquiry is found to be not necessary.

Discontinuation of Complaint

This is the cessation of inquiries into a complaint for reasons such as insufficient information or evidence from complainants and lack of complainants' consent for access to their personal data.

Enquiry

An enquiry is a request for information or advice. It is not yet, but may develop into, a complaint.

Full Investigation

This refers to an in-depth inquiry, usually into complex or serious complaints and invariably with recommendations for improvement or remedy upon conclusion.

Annex 5

Glossary of Terms

Inconclusive*

This is a situation where, at the end of a full investigation, The Ombudsman is not prepared to draw any conclusion on a complaint because the evidence is conflicting, irreconcilable, incomplete or uncorroborated.

Internal Complaint Handling Programme ("INCH")

This is a form of preliminary inquiries for relatively simple cases. With the consent of the complainant, we refer a case to the organisation concerned for investigation and reply direct to the complainant, with a copy to this Office. If the reply does not fully address the complaint, The Ombudsman may decide to continue with the inquiries.

Investigation

This may be a full investigation into a complaint or a direct investigation without a complaint.

Maladministration

This is defined in The Ombudsman Ordinance. It basically means poor, inefficient or improper administration including unreasonable conduct; abuse of power or authority; unreasonable, unjust, oppressive or improperly discriminatory procedures and delay; discourtesy and lack of consideration for a person.

Mediation

This is a voluntary process carried out where the complainant and the organisation concerned agree to meet to discuss the complaint and to explore mutually acceptable solutions. Investigators from this Office act as impartial facilitators.

Outside Jurisdiction

This refers to the situation where the action or organisation subject to complaint is not within The Ombudsman's jurisdiction under The Ombudsman Ordinance.

Preliminary Inquiries

These refer to inquiries to determine whether a full investigation is necessary.

* Previously "Incapable of Determination"

Annex 5

Glossary of Terms

Rendering Assistance / Clarification ("RAC")

This is another form of preliminary inquiries where INCH is considered inappropriate. After assessing all relevant facts, and considering a full investigation not necessary, this Office presents to the complainant and the organisation under complaint our findings with improvement or remedial suggestions.

Restrictions on Investigation

These are the restrictions on investigation under The Ombudsman Ordinance.

Substantiated, Partially Substantiated and Not Substantiated

These reflect the varying degrees of culpability of an organisation under complaint on conclusion of a full investigation.

Substantiated other than Alleged

This is where a complainant's allegations are unsubstantiated but The Ombudsman discovers other aspects of significant maladministration and comments on those other deficiencies.

Withdrawal of Complaint

This is a complainant's voluntary withdrawal of a complaint. However, depending on the nature or gravity of the allegations, The Ombudsman may still decide to continue the investigation.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(a) Guidelines for clarity, consistency or efficiency in operation

Organisation* (Case reference)	**Administrative Enhancement**
EMB (2007/2793)	New circular issued, detailing guidelines for implementation, to clarify that a special school can employ a substitute nurse direct or through a medical service organisation
FEHD (2007/3301)	Guidelines drawn up on the timeframe to submit food samples to Government Laboratory or other food testing organisations for analysis or testing
FEHD (2006/4616)	New guidelines issued on handling articles used in promotional activities in private places: namely, FEHD staff either to notify the landlord or management office concerned for necessary action, or to take enforcement action if the articles caused sanitary nuisance
HAD (2007/2444)	Reminder issued to all staff (including Access to Information Officers) to ensure compliance with the Code on Access to Information when handling requests for information
HD (2006/1735)	Guidelines revised on issue of Letter of Assurance# to tenants who temporarily do not or cannot occupy their flats and have to surrender them, to remind staff to liaise proactively with such tenants to assure them not to worry about losing their home on return *(# The letter assures the tenant that a flat will be allocated to him/her when public housing is needed again.)*
JO (BD & FEHD) (2007/3680 & 3752)	Reminder issued to staff requiring use of a properly signed “Notice of Appointment” for gaining entry into a flat suspected to be causing seepage
T & ELA (2006/3195)	Guidelines revised to include factors to be taken into account when considering an application for relocating an amusement game centre
VTC (2007/1336)	New system introduced for renting car parking spaces at the Institute of Vocational Education (Tsing Yi Campus) to evening students

* See Table 3 for the full name of the organisation against the acronym.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(b) Better arrangements for inter-departmental co-ordination

Organisation* (Case reference)	**Administrative Enhancement**
EMSD (2006/1597-8)	In traffic accidents resulting in damage to road facilities, EMSD to coordinate with Highways and Transport Departments in recovering costs and issue a consolidated demand note to the driver concerned
FEHD (2006/0757)	New arrangements made for FEHD to reduce processing time for delivering exhibits for testing to, and collecting the test results from, the Department of Health and Government Laboratory
HyD (2006/3602)	Arrangements made with the Transport Department and the Police Road Management Office for better coordination and hence speedier trial of temporary traffic arrangements for road works and earlier approval for commencement of works
JO (FEHD& BD) and WSD (2006/1163-4 & 1399)	WSD agreement to issue a Notice of Disconnection of Water Supply to the flat owner causing the seepage, based on JO's finding of water pipe leakage from the flat

* See Table 3 for the full name of the organisation against the acronym.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(c) Measures for better public enquiry/complaint handling	
Organisation* (Case reference)	**Administrative Enhancement**
BD (2006/0819)	New performance pledge for handling complaints against unauthorised building works and for replying substantively within 30 days after inspection
FEHD (2006/1617)	A Risk Assessment Report on Dyes for Testing Water Seepage and a Line-to-take on the health hazard of water colour test issued to enable frontline staff to answer public enquiries
GS (CS's Office) – ICC (2007/2441)	ICC's voice mailbox capacity increased from 1 to 4 hours and equipped with automatic surveillance system to monitor the residual capacity regularly
HA (2006/3548)	Procedures set for the Public Complaints Committee to enquire monthly with the Coroner's Court direct for decisions on death inquests, to avoid delay in handling complaints by families of the deceased
Imm D (2006/3194)	Response time stipulated for the Foreign Domestic Helper Section to answer public enquiries and procedural guidelines issued for the Department's general hotline to advise enquirers of the response time before referring the enquiry to the Section
JO (BD & FEHD) (2007/2653 & 2654)	Reminders issued for staff to bring up seepage cases every two weeks until conclusion to ensure close supervision of frontline staff action, especially on contacting the complainant for early collection of seepage samples
Lands D (2007/2487)	New form introduced for use by frontline staff for recording verbal complaints, thereby reducing the number of non-pursuable complaints due to lack of details or contact information
PO (2006/1031)	Complaint handling procedures revised so that, apart from an auto-reply to an email enquiry, a follow-up email is issued with details of the contact officer to facilitate further enquiry

* See Table 3 for the full name of the organisation against the acronym.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(d) Measures for better service	
Organisation* (Case reference)	**Administrative Enhancement**
BD (2006/3591)	Guidelines issued requiring staff to write to owners of unauthorised building works on BD's findings as soon as possible after compliance inspection
FEHD (2006/1994)	New surface channel constructed to prevent waste water from overflowing
FEHD (2007/2023)	New tender specifications drawn up, after consultation with the Police and the Environmental Protection Department, on PA systems to be used in Chinese New Year fairs in Victoria Park to cut noise nuisance
EMB (2006/1696)	Policy revised to allow special schools under different sponsors to appoint an educational psychologist jointly, as with non-special schools
Lands D (2006/4313)	Departmental guidelines revised to refund deposits, upon termination of short-term tenancies, within one month after site vacation for a straightforward case
Lands D (2007/2295)	In-house working group set up to re-engineer the processing of applications for rebuilding small houses and more efficient processing system subsequently implemented
PO (2006/3784)	The mail tracing system improved to monitor movement of unsuccessfully delivered mail items; the mailbox capacity of individual officers increased for larger volume of email

* See Table 3 for the full name of the organisation against the acronym.

Annex 6

Examples of Improvement Measures Introduced by Organisations Following Our Recommendations or Initiated after Commencement of Our Inquiries

(e) Clearer information to the public

Organisation* (Case reference)	**Administrative Enhancement**
FEHD & HAD (2004/3077-8)	FEHD Guide to Application for Outside Seating Accommodation revised to incorporate the requirement for local consultation through HAD District Offices
HKEAA (2007/2534 & others)	Clearer instructions to candidates on possible penalty for writing beyond the prescribed word limit for the "Use of English" paper and on marking schemes for unanswered questions for other papers
Lands D (2005/3793)	A pamphlet entitled "Calculation of Forbearance Fee for Commerce Use in Existing Industrial Buildings" prepared and uploaded to the Department's website for information of shop owners intending to apply for lease modification

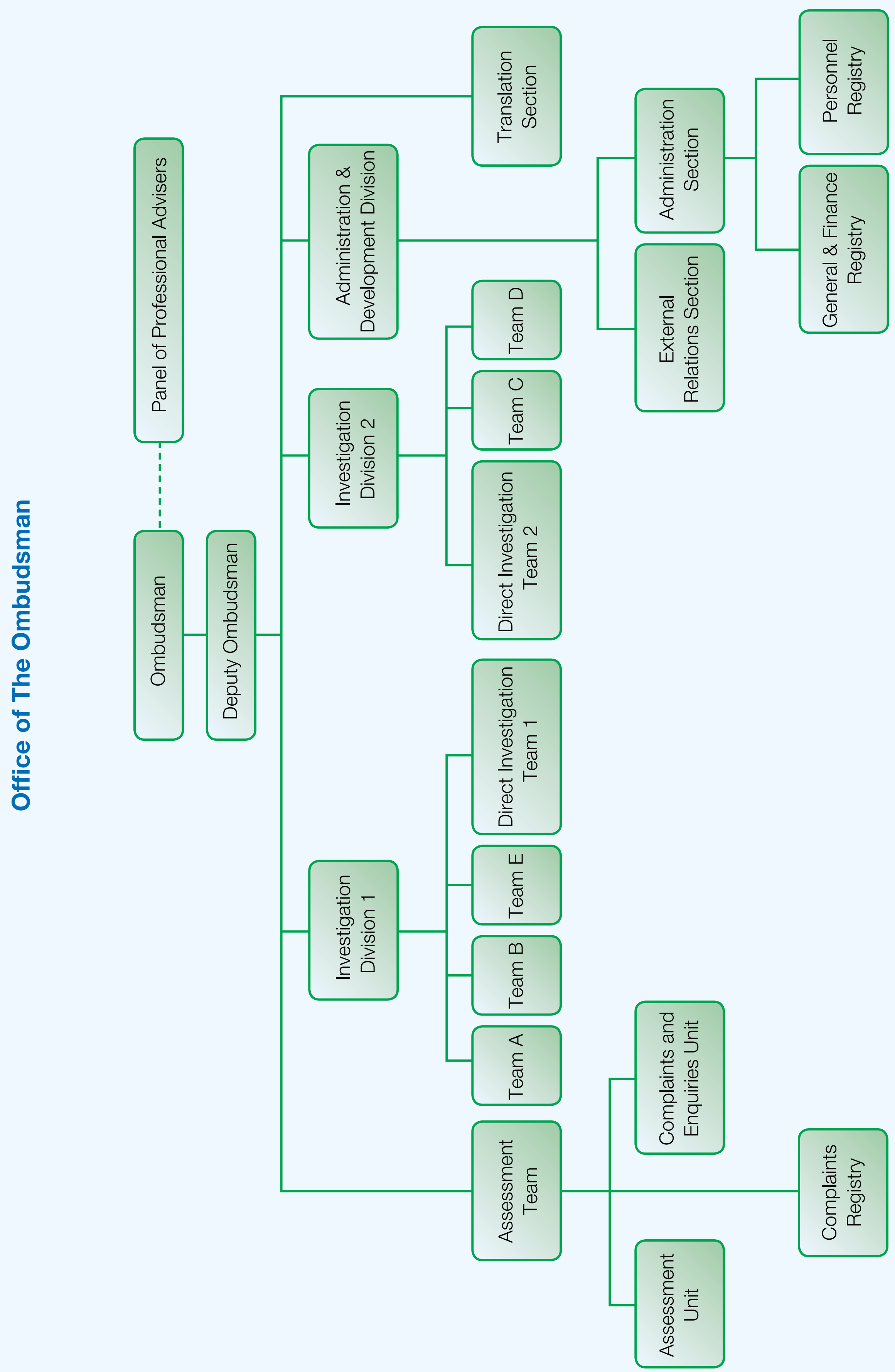
(f) Training for staff

Organisation* (Case reference)	**Administrative Enhancement**
EMB (2006/1786)	Briefing and experience-sharing sessions organised to enhance staff understanding of school registration matters; "Frequently Asked Questions" developed and posted on the Bureau's intranet for reference
HD (2006/2329)	Case-sharing organised and internal email and circulars issued to enhance staff understanding of the established policy for transfer of tenancy in divorce cases

* See Table 3 for the full name of the organisation against the acronym.

Annex 7

Organisation Chart



Annex 8

Visits to the Office of The Ombudsman

Date	Visitors*
17.9.2007	Delegates from Hebei Provincial People's Government, China
31.10.2007	Dr. Attila Péterfalvi, Parliamentary Commissioner for Data Protection and Freedom of Information of Hungary
20.11.2007	Delegates from Qinghai Provincial People's Government, China
21.11.2007	Participants of the 5th Postgradute Certificate Course in Corruption Studies, organised by School of Professional and Continuing Education, University of Hong Kong
29.11.2007	Delegates from Jianxi Provincial People's Government, China
03.12.2007	Mr. Isbah Idrus, Deputy Director General, Public Complaints Bureau, Prime Minister's Department of Malaysia
18.12.2007	Delegates from Fujian Provincial People's Government, China
20.3.2008	Ms Tao Kaiyuan, Vice President of the High People's Court of Guangdong Province, China

* Excluding group visits from local schools and social service agencies

Annex 9

Summary of Findings from Thematic Household Survey 2007

(Comparison with findings in 2000 and 2003, where possible.)

Have you ever had any dissatisfaction with government departments or public bodies regarding the following aspects? # ^	
Yes	**23.4%**
a. Poor staff attitude	40.5%
b. Delay	37.5%
c. Ineffective control	36.8%
d. Lack of response	32.8%
No	**76.6%**

Why didn't you complain/think of complaining them? # ^	
Too troublesome	53.2%
Ineffective to complain	39.7%
Do not know how to complain	20.5%
Do not know whom to complain	17.3%

Which of the following channels do you think you would approach if you wish to lodge a complaint about maladministration of a government department or public body? What other channels would you approach? # ^

	2007	2003	2000
Complaint channel of the department/public body concerned	35.5%	25.1%	37.5%
District Council/member of District Council	30.5%	19.8%	46.1%
Office of The Ombudsman	15.5%	9.8%	22.3%
Media (e.g. radio, TV, newspaper or magazine)	13.9%	14.7%	20.5%

What are your reasons for choosing this/these channel(s)? Any other reasons? # ^

	2007	2003	2000
Convenience	44.2%	44.5%	44.3%
Efficiency in processing complaints	25.4%	27.2%	33.9%
Those channels are specifically for handling complaints	23.9%	1.4%	N.A.
To draw attention of the public and give more pressure to department, organisation concerned	16.9%	23.3%	1.0%

Multiple answers allowed. ^ Only top four highest score shown.

Annex 9

Summary of Findings from Thematic Household Survey 2007

	Now, I would like to invite you to assess the performance of the Office of The Ombudsman based on these attributes. @	Now, I would like to invite you to assess the performance of the Office of The Ombudsman based on these five selected attributes.@	Of the 5 important attributes you selected above, how would you perceive to be the performance of the Office of The Ombudsman in each of them? @
	2007	**2003**	**2000**
Providing easily accessible complaint channels for complainants	2.67	2.20	1.93
Making scope of service conspicuous to the public	2.61	2.17	N.A.
Efficient, offering speedy action and resolution within pre-determined time limits	2.62	2.19	1.93
Objective and free from undue influence or interference	2.88	2.34	2.00
Keeping information confidential, and protecting the privacy of complainants	3.13	2.49	2.21
Clear explanation of the whole story	2.72	N.A.	N.A.
Identification of critical issues in complaints	2.71	2.19	1.94
Clear explanation of reasons when making decisions	2.65	2.14	1.96
Informing the complainants the progress regularly	2.61	2.22	1.84
Helpful and courteous staff	2.98	2.34	1.88
Providing useful information and advice	2.78	2.24	1.99

@ Scale adopted in 2007 – 1-4 ("4" means "very good" and "1" means "very poor")
2003 – 1-3 ("3" means "good", "2" means "average" and "1" means "poor")
2000 – 1-3 ("3" means "excellent", "2" means "satisfactory" and "1" means "poor")

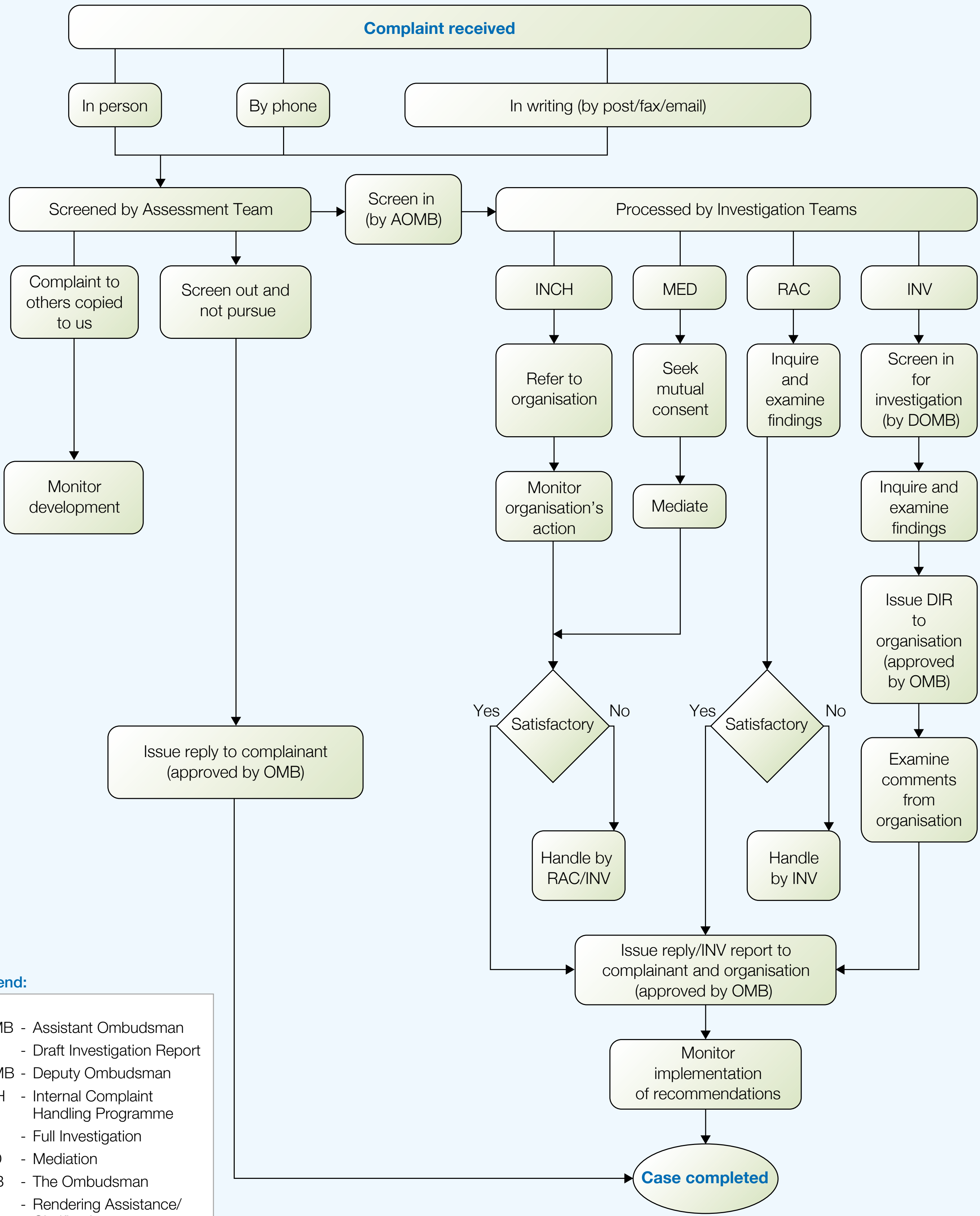
Annex 9

Summary of Findings from Thematic Household Survey 2007

	As far as you know, is the Office of The Ombudsman empowered to conduct direct investigations on problems of public concern even though no complaints were received?		Are you aware that the Office of The Ombudsman is empowered to conduct own-motion direct investigations on problems of public concern?
	2007	**2003**	**2000**
Yes	24.2%	20.6%	22.4%
No	38.6%	21.6%	N.A.
Don't Know	37.2%	57.8%	N.A.

Annex 10

Flow Chart on Handling of a Complaint



Legend:

- AOMB - Assistant Ombudsman
- DIR - Draft Investigation Report
- DOMB - Deputy Ombudsman
- INCH - Internal Complaint Handling Programme
- INV - Full Investigation
- MED - Mediation
- OMB - The Ombudsman
- RAC - Rendering Assistance/ Clarification

Annex 11

Guidelines for Initiating Direct Investigations

The Ombudsman is empowered to initiate investigations of his own volition, even though no complaint on the matter has been received.

This power enables The Ombudsman to be more proactive in the approach to problems of public interest and concern. It is particularly useful to:

(a) follow through systemic problems which investigation of a complaint alone may not resolve;

(b) nip problems in the bud by addressing deficiencies in systems and procedures; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of complaints, but are believed or suspected to be the underlying reasons for complaint.

To facilitate consideration of matters for direct investigation, The Ombudsman has established some general guidelines:

(a) the matter concerns public administration and involve alleged or suspected maladministration as defined in The Ombudsman Ordinance;

(b) the matter should be of sufficient dimension and complexity, representing the general interest, desire or expectation of the community, or at least a sector in the community;

(c) individual grievances will normally not be a candidate for direct investigation, as there is no reason why the individual concerned cannot come lodge a complaint personally;

(d) a complaint will otherwise not be actionable, e.g. it is made anonymously or not by an aggrieved person, but the matter is nevertheless of grave concern to The Ombudsman;

(e) the matter is normally not subject to the jurisdiction of the Court or a tribunal constituted under any Ordinance *or* it would not be reasonable to expect the affected person(s) to resort to the Court or any tribunal for remedy; and

(f) the time is opportune for a direct investigation, weighing against the consequences of not doing so.

These are no more than guidelines and are by no means exhaustive. Much will depend on the actual matter or problems.

Annex 12
List of Direct Investigations Completed

	1994/95
1.	Unauthorised building works
	1995/96
2.	Overcrowding relief in public housing
3.	Accommodation for foreign domestic helpers
4.	Unauthorised building works in New Territories exempted houses
	1996/97
5.	Provision of emergency vehicular access and fire services installations and equipment for public and private building developments
6.	Problem of water main bursts
7.	Co-ordination between the Social Welfare Department and the Housing Department in processing application for housing transfer on social grounds
8.	Selected issues on general out-patient service in public clinics and hospitals
9.	The Education Department failing to complete, on a timely basis, the processing of an application from a hearing impaired student to attend a special school
	1997/98
10.	Government telephone enquiry hotline services
11.	Fisheries Development Loan Fund administered by the Agriculture and Fisheries Department
12.	Arrangements for the closure of schools due to heavy persistent rain
13.	Issue and sale of special stamps and philatelic products
14.	Taxi licensing system
15.	Co-ordination between the Drainage Services Department and the Environmental Protection Department over the protection of public beaches from being polluted by sewage discharges
16.	Charging of management fees in Home Ownership Scheme Estates managed by the Housing Department

Annex 12

List of Direct Investigations Completed

	1998/99
17.	Dispensary service of the Department of Health
18.	Handling of trade documents by the Trade Department
19.	Recovery of public rental flats under the Home Ownership Scheme, the Private Sector Participation Scheme and the Home Purchase Loan Scheme by the Housing Department
20.	Registration of tutorial schools
21.	Commissioning and operation of New Airport at Chek Lap Kok
22.	Restaurant licensing system
23.	Issues pertaining to imported pharmaceutical products
	1999/00
24.	Registration and inspection of kindergartens
25.	Provision and management of private medical and dental clinic services in public housing estates
26.	Regulatory mechanism for the import/export, storage and transportation of used motor vehicles/cycles and related spare parts
	2000/01
27.	Regulatory mechanism for local travel agents for inbound tours
28.	Selected issues concerning the provision of retraining courses by the Employees Retraining Board
29.	Clearance of Provisional Urban Council tenants and licence holders affected by the Land Development Corporation's development projects
30.	Selected issues concerning the management of government crematoria
31.	Procedures for immigration control of persons who present themselves, are found or returned to immigration check points without proof of identity
	2001/02
32.	Procedures for handling travellers suspected of using false or otherwise suspect travel documents
33.	Management of construction projects by the Housing Authority and the Housing Department
34.	Administration of public examinations
35.	Mechanism for enforcing the prohibition of smoking in no smoking areas and public transport carriers

Annex 12

List of Direct Investigations Completed

	2002/03
36.	The Education Department's contingency and relief measures for the secondary school places allocation exercise 2001
37.	Funding of sports programmes by the Hong Kong Sports Development Board
38.	Administration of vehicle registration marks auctions
39.	Mechanism for handling missing patients in hospitals of the Hospital Authority
40.	Monitoring of charitable fund-raising activities
41.	Role of the Home Affairs Department in facilitating the formation of owners' corporations
	2003/04
42.	Enforcement of the Education Ordinance on universal basic education
43.	Operation of the Integrated Call Centre
44.	Assistance provided by the Home Affairs Department to owners and owners' corporations in managing and maintaining their buildings
45.	Prevention of abuse of the Comprehensive Social Security Assistance Scheme
46.	Handling of examination scripts under marking
	2004/05
47.	2003 Priority arrangements for surplus teachers in aided primary schools
48.	Enforcement of the Building Management Ordinance
49.	Enforcement action on unauthorised building works in New Territories exempted houses
50.	Administration of urn grave cemeteries
51.	Bloodworm incidents in public swimming pools
	2005/06
52.	Letting of market stalls by auction
53.	Monitoring of property services agents by the Housing Department
54.	Monitoring of assigned-out cases by the Legal Aid Department
55.	Medical fee waiver system

Annex 12

List of Direct Investigations Completed

	2006/07
56.	Administration of the mid-levels moratorium
57.	Overpayment of disability allowance
58.	Monitoring of cases with statutory time limit for prosecution by the Food and Environmental Hygiene Department
59.	Assessment of children with specific learning difficulties
	2007/08
60.	Special examination arrangements for students with specific learning difficulties by the Education Bureau and the Hong Kong Examinations and Assessment Authority
61.	Mechanism for handling conflict of interests in organisations subvented by the Leisure and Cultural Services Department
62.	Alleged overcharging of water bill by the Water Supplies Department
63.	Handling of water seepage complaints

Annex 13

Summaries of Direct Investigations

EDUCATION BUREAU ("EDB") AND HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY ("HKEAA")

Case No. OMB/DI/168

Special Arrangements for Examinations for Students with Specific Learning Difficulties

(Investigation commenced on 19 April 2007 and completed on 11 February 2008)

Background

This study follows up our direct investigation into assessment of children with Specific Learning Difficulties ("SpLD") in April 2007, to examine the support services for these students. As examinations are an integral part of our education system with considerable impact on the future of young people, The Ombudsman considered this a priority.

What is SpLD?

2. Characteristically, despite normal intelligence and education opportunities, children with SpLD have problems with one or more of the basic processes: listening, speaking, reading, writing and mathematical calculations.

Why Are Special Arrangements Necessary?

3. Special arrangements for examinations are intended to "level the playing field" by lessening the adverse impact brought about by SpLD so that the students can demonstrate their ability fully.

4. It is Government policy to provide special arrangements for students with SpLD and other students with special education needs ("SEN"). The Disability Discrimination Ordinance Code of Practice on Education (issued by the Equal Opportunities Commission) states that educational establishments have to provide reasonable accommodation for these students. In the Code, special arrangements are considered reasonable accommodation.

Special Arrangements for Internal Examinations

5. EDB regards special arrangements for internal tests and examinations as "part of the school-based support measures for students with SEN", including SpLD. Precise arrangements are to be made by schools based on the difficulties of their students, with reference to the guidelines of EDB and with advice from specialists such as educational psychologists. Parents can approach EDB for assistance if there is disagreement between them and the school over such arrangements.

6. Special arrangements for internal examinations may include extending examination time and enlarging the space in the answer sheets.

Annex 13

Summaries of Direct Investigations

Special Arrangements for Public Examinations

7. Candidates with SpLD may apply to HKEAA for special arrangements in public examinations:

(a) in September/October of the Secondary 4 and 6 academic year ("early application"); or

(b) in September/October of the Secondary 5 and 7 academic year ("second phase application").

8. Each application has to be made by:

(a) completion of an application form;

(b) submission of an assessment report form duly signed by a qualified psychologist and the head of the school. The candidate's needs must be supported by —

(i) records of special arrangements in the candidate's school; and

(ii) an up-to-date psychological assessment report.

9. Applications are normally processed in three stages:

(a) HKEAA Secretariat staff screens each application for completeness of information and supporting documents.

(b) Vetting Team considers whether there is a firm diagnosis of SpLD and whether the special arrangements requested are reasonable.

(c) The Task Group makes a decision to approve or reject the application.

(d) The decision of the Task Group is posted to the candidate's school and copied to the candidate in February in the year following the submission of the application.

10. If dissatisfied with the decision, candidates may request in writing for review by an Appeal Panel within one week from the date of the notification letter, giving reasons and supporting documents.

11. Special arrangements for public examinations may include extra time and allowing writing on only one side of an answer book.

Observations and Opinions

Assessment Tool for Secondary Schools

12. Prior to September 2007, in the absence of an assessment tool for secondary school students, candidates of the Hong Kong Certificate of Education Examination had to be assessed by the assessment tool for much younger children (in one case we studied: assessment tool for children aged 10.5 was used for a 16-year-old). This raised the question whether the findings were accurate and fair. With EDB's introduction of the new assessment tool for junior secondary school students in the 2007/08 school year, we expect this situation to improve significantly.

Special Arrangements in Internal Examinations

13. While EDB issues guidelines to schools and provides professional advice, actual implementation of special arrangements is left to individual school administration. We are concerned that practices may vary significantly from school to school.

14. Our investigation shows that some schools are meticulous in making special arrangements for SpLD students; some do the minimum; others pay lip service and some simply turn a blind eye. This could be due to lack of knowledge among some teachers or the heavy caseload of educational psychologists.

15. Government had surveyed the views of primary school personnel on special arrangements in 2005. Another review is due and it should cover secondary schools as well.

Special Arrangements for Public Examinations

16. *Increase of SpLD Students.* There has been a dramatic increase of SpLD students since 2003/04:

School Year	Primary	Secondary	Total
2003/04	1,195	165	1,360
2004/05	3,045	640	3,685
2005/06	5,534	1,096	6,630
2006/07 (as at 15.9.07)	6,110	2,760	8,870

Source: EDB statistics

17. There has also been a significant increase in the number of applications for special arrangements in the past five years:

Examination Year	Applications Received	
	HKCEE*	**HKALE#**
2003	1	0
2004	8	0
2005	12	2
2006	28	1
2007	48	4

* HKCEE: Hong Kong Certificate of Education Examination
HKALE: Hong Kong Advanced Level Examination
Source: HKEAA statistics

18. The increase in the number of applications anticipated will have implications for the workload of HKEAA.

19. *Tardiness in Conveying Task Group's Decisions.* The time lapse for HKEAA Secretariat staff to dispatch to schools the notification of the Task Group's decisions ranged from 28 to 35 days. There is a case for notifying refused applicants as soon as possible, to allow them more time to consider appeal and take further action.

20. In April 2005, HKEAA introduced the "early application" option (para. 7). Regrettably, few students have made use of this option:

Year	SpLD Applications in HKCEE	Early Applications in HKCEE	SpLD Applications in HKALE	Early Applications in HKALE
2006	25	9	1	1
2007	44	2	4	0

Source: HKEAA statistics

21. The "early application" option should give ample time for HKEAA to process the applications; ease the stress on the students in awaiting the outcome to enable them to focus better on their studies; and facilitate schools emulating the approved special arrangements so that the students can familiarise themselves with those arrangements.

22. *Unreasonable Time Allowed for Appeals.* It is a time-consuming process if further psychological assessment is required for appeal. Officially, according to HKEAA guidelines, the deadline for appeal is one week. In the cases we studied, the deadline ranges from five to 12 days. As the notification letter was sent through the post, the duration actually given was even shorter than that stated in the letter.

23. *Lack of Transparency.* Our study shows that HKEAA generally did not give reasons for rejecting an applicant.

24. *Different Opinions in Diagnosis.* The Task Group rejected three applications despite support from educational/clinical psychologists. The Appeal Panel even noted in one case that "there were discrepant opinions on diagnosis and standard assessment tools for SpLD were not available". With the introduction of the new assessment tool (para. 12), we hope such discrepancies will be minimised.

25. *Need for Review of Criteria for Use of Computers.* We consider that, in deciding whether use of computer should be permitted, views of the professionals (i.e. educational psychologists, doctors) consulted by the student concerned should be given weight in case of doubt.

26. *Composition of the Task Group.* Apart from the students themselves, those most concerned are their parents. Parental representation on the Task Group should help.

27. *Record Keeping.* Our examination of HKEAA documents shows that, except for one case, no record is kept of the details of the deliberations or the reasons for decisions of the Task Group or Appeal Panel.

28. *Administration of Examination Arrangements.* In one case we studied, an SpLD candidate was given wrong information about his examination centre. Although possibly an isolated case, it has highlighted the importance of cross-checking arrangements.

Public and Parental Awareness

29. It is important that parents are aware that they can approach EDB for assistance in case of disagreement with the school over special arrangements for their SpLD children.

Related Issues

30. We have identified several issues for our further study:

(a) the notable decrease in number of SpLD students at senior secondary level;

(b) insufficient recognition of SpLD among some of the teachers and staff; and

(c) allegations of schools refusing to submit SpLD children's applications for HKCEE.

Recommendations

31. The Ombudsman made recommendations for EDB and HKEAA, including:

For EDB Action

(a) To remind school administration that special arrangements for students with SpLD for internal examinations are a requirement under the Disability Discrimination Ordinance.

(b) To monitor suitably the implementation of special arrangements for internal examinations.

(c) To survey and assess the requirements for educational psychology service and to plan for such provision.

(d) To survey both primary and secondary schools to review the existing special arrangements for internal examinations.

For HKEAA Action

(e) To set an earlier target time-frame for informing candidates of the Task Group's decision regarding their applications.

(f) To provide a more reasonable time-frame for appeal.

(g) To consider making the "early application" option a normal and common practice.

(h) In case of rejection, to give reasons to enable candidates to consider further action.

(i) To review the existing criteria for use of computer.

(j) To consider parental representation on the Task Group.

(k) To document the deliberations of the Task Group and the Appeal Panel.

(l) To review the procedures for administration of examination arrangements to ensure that the correct special arrangements are put in place.

(m) To review resource requirements in anticipation of increase in workload resulting from significant increase in applications for special arrangements.

For EDB and HKEAA Action

(n) To promote awareness among parents and students of EDB assistance in case of disagreement with the school.

(o) To publicise the availability of special arrangements through easily accessible and comprehensible means, e.g. pamphlets.

(p) To step up liaison with parent-teacher associations and non-Government organisations for assistance in consultation and dissemination of information.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), BUILDINGS DEPARTMENT ("BD"), WATER SUPPLIES DEPARTMENT ("WSD") AND JOINT OFFICE OF BD AND FEHD ("JO")

Case No. OMB/DI/126
Handling of Water Seepage Complaints
(Investigation commenced on 5 July 2007 and completed on 31 March 2008)

Background

Seepage is basically a matter of building management and maintenance for property owners. However, if it causes public health nuisance, building safety risks or wastage of water, Government has a statutory responsibility to intervene. The departments concerned are FEHD, BD, WSD and, since mid-2006, JO[1] comprising BD and FEHD staff. WSD is not a party to JO.

[1] After a pilot JO set up in December 2004 in Shamshuipo, the JO scheme was extended in mid-2006 to the whole territory.

2. Seepage matters have been a perennial source for complaints. These complaints have continued even after establishment of JO intended to be a one-stop service for handling these complaints. Against this background, The Ombudsman initiated a direct investigation to examine the effectiveness of the JO scheme in handling seepage complaints.

Recent Developments

3. The JO scheme, planned to operate for three years, was undergoing an interim review in early 2008. Meanwhile, JO had already introduced measures to improve procedures concerning operational timelines, entry to suspected premises and management of consultants.

Observations and Opinions

4. Despite its relative success over previous arrangements, the service provided by JO is neither adequately coordinated nor efficiently effective. Our study has identified a number of serious deficiencies in Government's arrangements in handling seepage complaints.

Disjointed JO Structure

5. JO lacks a coherent structure and is but a loosely "joined" assortment of BD and FEHD staff in uneasy partnership and without a lead department. Neither BD nor FEHD has proper authority over all JO staff or responsibility for JO performance.

6. Furthermore, given that 12% of seepage cases are related to water supply pipes, not including WSD in JO makes enforcement in these cases incomplete, and even difficult.

Disagreement over Enforcement Responsibilities

7. Failure of FEHD, BD and WSD to agree on their enforcement responsibilities defers and at times, even hinders action. Some cases have dragged on for an inordinately long time (18 months of disagreement in one case), without any consideration for the plight of the affected parties.

Divergent Interpretation of "Nuisance"

8. Departmental disagreement, or uncertainty, over responsibilities is complicated by the diverse interpretation of "nuisance". For example, while FEHD does not see seepage of rainwater or potable water as nuisance, BD and WSD tend to treat seepage cases not enforceable under their purview as nuisances enforceable by FEHD.

Insufficient Timelines and Ineffective Monitoring

9. JO's operational guidelines contain insufficient target timelines or performance pledges for most tasks. There is also no requirement to inform complainants of progress. In one of the worst cases, there was a lapse of 23 months of inaction by JO staff.

Ineffective Management of Consultants

10. Consultants play an important role in JO investigation. Some consultants have proved to be inefficient and even incompetent, despite monitoring mechanisms including biweekly progress meetings, issue of warning letters, and sanctions such as termination of contract.

11. A cause for the poor performance of some consultants could be the short duration of their contracts (maximum 12 months). This short duration often means that by the time the consultant and his staff gain sufficient knowledge and experience in the work, the contract nears expiry. It is also relatively difficult for the consultant to recruit and retain good staff under such short contracts.

Problems in Resolving Civil Disputes

12. Some property owners do solve seepage problems through their own efforts, often with the cooperation of their neighbours. Where such cooperation is absent, some would resort to legal proceedings. However, the existing channels for resolving such civil disputes have disadvantages:

(a) Generally legal proceedings are expensive both in terms of time and costs.

(b) The Small Claims Tribunal is not expensive but it can only handle cases where damage has actually been sustained and the claim does not exceed $50,000. It is particularly not useful in cases where the party suspected to be the source of seepage does not allow investigation or facilitate repairs.

Recommendations

13. Government initiative is commendable in setting up JO as a one-stop service and in exploring ways for improving its operation. For further improvement, The Ombudsman made 17 recommendations, including the following:

(a) BD, FEHD and WSD to seriously review the organisation and staffing of JO with a view to designating a department to be the acknowledged head of JO with formal authority and clear lines of command over staff and office management.

(b) As part of this review, to consider including WSD as part of JO operation.

(c) BD, FEHD and WSD to work out some mechanism to resolve disagreement over enforcement responsibilities expeditiously.

(d) FEHD to develop a clear, precise and publicly defensible definition of “nuisance” and to establish practical guidelines for staff on the issue of nuisance notices.

(e) JO to establish more comprehensive internal milestones and public performance pledges for monitoring progress.

(f) JO to be more vigilant and more outcome-oriented in its operational monitoring of seepage consultants.

(g) In cases of significant under-performance or serious delay by consultants, JO to intervene to redress the situation.

(h) JO to consider granting consultant contracts of longer duration.

(i) BD to discuss with Development Bureau on according priority to establishing a Building Affairs Tribunal, a proposal mooted by Government since 2005.

14. The departments accepted all our recommendations.

LEISURE AND CULTURAL SERVICES DEPARTMENT ("LCSD")

Case No. OMB/DI/156
Mechanism for Handling Conflict of Interests in Organisations Subvented by LCSD
(Investigation commenced on 5 February 2007 and completed on 12 November 2007)

Background

In March 2006, the media reported that the Hong Kong Amateur Athletic Association ("HKAAA") had awarded a service contract to a company owned by its Chairman. As HKAAA receives subvention from LCSD, The Ombudsman was concerned whether LCSD had appropriate mechanism to monitor its subvented organisations for conflict of interests.

Subvention and Financial Support

2. LCSD grants can be broadly divided into two categories: annual subvention and project-based financial support. From 2004/05 to 2006/07, LCSD granted a total of $1,085 million.

Annual Subvention

3. Organisations receiving annual subventions include:

(a) national sports associations;

(b) non-governmental organisation holiday camps and sea activities centres; and

(c) performing arts groups (the Home Affairs Bureau had taken over funding responsibility for these groups since 1 April 2007).

Project-based Financial Support

4. Project-based financial support is provided for a number of organisations to present cultural programmes and to undertake "greening Hong Kong" and "greening school" activities.

Monitoring Mechanism

Annual Agreement

5. Under an annual Agreement with Government, national sports associations and performing arts groups undertake, among other things, to observe fair and transparent procedures for procurement and tendering and to avoid conflict of interests in their operational practices and decision-making processes.

Code of Conduct

6. LCSD issues a sample Code of Conduct ("the Code") for subvented national sports associations. The performing arts groups have devised their own Codes. These Codes set out standard of conduct on such matters as acceptance of advantages and conflict of interests.

Subvention Principles

7. Subvention Principles set out the parameters for holiday camps and sea activity centres on such matters as entry requirements for managerial staff, use of income, need for submission of annual budget and audited accounts.

Engagement of Services

8. For project-based financial support, the notification letter or agreement conveying approval for funding prescribes obligations for preparing evaluation reports and certified accounting records.

Quality Audit

9. LCSD conducts random audit on annual audit reports, funding records and compliance with the Code and terms of the Agreement or notification letter.

Our Observations and Opinions

HKAAA Case

10. LCSD initiated its own inquiry on the HKAAA case and implemented a series of improvement measures:

(a) requiring HKAAA to review its procurement procedures and engage independent third parties such as auditors in its procurement committee;

(b) holding a joint seminar with the Independent Commission Against Corruption ("ICAC") for all national sports associations on declaration of interests, promulgation of procurement guidelines and proper payment methods;

(c) issuing a sample Code (revised by ICAC) and procurement guidelines (devised by ICAC) to all national sports associations;

(d) requiring all national sports associations to review their internal ethical code and to draw up procurement procedures for submission to LCSD; and

(e) engaging professional bodies for thematic seminars to promote good practices to subvented organisations for better corporate governance.

11. For HKAAA, the term of the Chairman concerned expired and he ceased to hold office in January 2007. The service contract in question expired in September 2007.

Code of Conduct and Procurement Guidelines

12. The contents and provisions of the Codes devised by the performing arts groups vary from each other. Holiday camps, sea activity centres and grantees of the greening schemes are not governed by a Code. It is crucial that uniform standards, controls and safeguards be applied across all subvented activities, whether leisure or cultural in nature.

Quality Audit

13. The subvention agreement gives LCSD, as the subvention authority and custodian of public funds, the right to ask the subvented organisations to account for any suspected breach of the Code. To ensure effectiveness, LCSD should consider setting out this right in the agreement.

14. LCSD should refine its compliance checking system by specifying the types of records subvented organisations should keep for declaration of interests.

Sanctions

15. Provision for sanction, including termination of agreement, is included in Agreements. However, such sanction does not apply to holiday camps and sea activity centres for breach of Subvention Principles or the guidelines on invitation of quotations, calling of tenders and accounting arrangements.

Recommendations

16. The Ombudsman made a number of recommendations for LCSD and the Home Affairs Bureau (for the performing arts groups only):

(a) In consultation with ICAC, to devise a scheme to manage conflict of interests properly for award of contracts and to deal with circumstances where conflict of interests has arisen.

(b) In consultation with ICAC, to formulate or review the Code and procurement procedures, as necessary.

(c) To request the subvented organisations to circulate the revised Code and Procurement Guidelines among their officials and staff periodically.

(d) To consider enshrining in the Agreement the right to request the subvented organisations to account for any suspected breach of the Code.

(e) To specify the type of records the subvented organisations should keep for declarations of interests.

(f) To consider introducing a sanction clause for holiday camps and sea activity centres.

(g) To lay down procedures for remedial action if compliance checking reveals possible breach of the Code or the Agreement.

17. LCSD and the Home Affairs Bureau accepted all our recommendations.

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB/DI/165
Alleged Overcharging of Water Bills
(Investigation commenced on 22 March 2007 and completed on 10 March 2008)

Background

Complaints against the Water Supplies Department ("WSD") about overcharging have continued to surface over the years. Some water bills involved huge sums and WSD was criticised for not handling complaints satisfactorily.

Causes for Overcharging

2. From 1 April 2005 to 31 October 2007, WSD rectified 32,945 inflated bills. These cases had resulted from the following causes as identified by WSD:

Cause	No. of Cases	Percentage
Incorrect meter reading	2,554	7.75%
Defective meter	3,037	9.22%
Inaccurate estimation	18,218	55.30%
Wrong meter arrangement	460	1.40%
Leakage of inside service	92	0.28%
Cannot be ascertained by WSD	8,584	26.05%
Total	**32,945**	**100%**

Observations and Opinions

3. **General.** Overcharging cases dent WSD's reputation and professional credibility. They incur remedial costs in terms of extra man-hours for processing complaints and rectifying errors. These costs may not be visible, but are nonetheless real and not to be underestimated.

4. WSD's classification of the causes for overcharging is incomplete. Manpower constraint and human error may also contribute to overcharging.

5. **Consumption Determination.** Defective meters accounted for 9.22% of the confirmed cases of overcharging. WSD has been implementing a programme to replace about 1.2 million water meters over 12 years old by March 2011. Some 400,000 meters have been replaced so far.

6. WSD takes over eight million meter readings a year. Despite a reading accuracy of 99.97%, incorrect meter reading still caused 7.75% of confirmed overcharging. In some cases, the margin, or magnitude, of error could be outrageous.

7. **Charging by Estimation.** "Inaccurate charge estimation" was the predominant cause for overcharging, accounting for 55.3% of the confirmed cases. The magnitude of the excessive sums was, in some cases, staggering (exceeding the adjusted charge by over $146,000 or 3,697 times in one case). WSD should use estimation only on need and with caution and common sense. Where it can be replaced with proactive customer service, this should take precedence.

8. **Fault Checking.** Technology aside, vigilant monitoring and proactive staff back-up are equally essential for effective problem detection and prevention. Both seem to have been deficient at WSD.

9. **Manpower Constraint.** Continuing manpower constraint has rendered the checking mechanism ineffective. This raises questions about WSD's manpower planning and staff training.

10. **Handling Enquiries and Complaints.** There is a need for WSD to review regularly and upgrade, where warranted, its capacity for prompt response to public enquiries and complaints.

Recommendations

11. The Ombudsman made 13 recommendations to WSD, including:

    (a) To review the estimation mechanism and minimise its use by conducting actual meter reading, adopting users' self-readings and providing proactive customer services where practicable.

    (b) To improve classification of cases of overcharging and analysis of their causes and costs.

    (c) To promote staff vigilance to overcharging and ensure effective monitoring of meter reading accuracy.

    (d) To ensure adequate manpower for prompt follow-up on cases detected in fault checking.

    (e) To regularly review and upgrade, where warranted, the capacity for providing prompt response to public enquiries and complaints.

12. WSD generally accepted our recommendations, with implementation estimated to take one year.

Annex 14

Summaries of Selected Direct Investigation Assessments

HOSPITAL AUTHORITY ("HA")

Case No. OMB/DI/171

Management of Mortuaries in Hospitals under HA

(Assessment commenced on 22 April 2007 and completed on 16 November 2007)

Background

In April 2007, there was widespread media coverage about mix-up of the bodies of two deceased persons sharing the same compartment in the mortuary of the Prince of Wales Hospital ("PWH"). Concerned whether measures were in place to ensure proper identification for release of body, respect for the deceased and sensitivity to the feelings of relatives, The Ombudsman initiated this direct investigation assessment.

Procedures for Identification and Release

2. Hosp A has established procedures for collection of the deceased from the ward, documentation for body storage in the mortuary, checking of identification documents by mortuary staff, identification of the deceased by relative(s) or authorised representative, documentation for release of the body and release of the body.

Investigation Panel

3. An Investigating Panel set up by HA in response to the mix-up incident found the causes to be:

(a) a mortuary attendant's failure to comply with the established procedures to ascertain the identity of one of the bodies concerned was the main cause; and

(b) other contributing factors included –

(i) overcrowding of the mortuary leading to double occupancy;

(ii) the error of the wife of the deceased in identifying her late husband's body; and

(iii) the guidelines for collection and identification of bodies not being stringently enforced.

Improvement Measures

4. The Investigating Panel made the following recommendations for improving PWH's mortuary services:

(a) strengthening supervision, by random auditing, of mortuary staff's compliance with the guidelines;

(b) issuing instructions for identification of bodies;

(c) stepping up documentation and counterchecking of the body identification process;

(d) piloting a system for bar-coding bodies;

(e) augmenting PWH mortuary capacity from 56 to about 100 by the end of 2008; and

(f) encouraging early collection of bodies.

5. During the course of our inquiry, HA had extended these improvement measures to all its hospitals and started implementing them by phases. HA would also seek the cooperation of the Food and Environmental Hygiene Department to increase the capacity of cremation service, to cut the waiting time for cremation, thereby reducing the occupancy of mortuaries.

Comments and Conclusion

6. The mortuary attendant's non-compliance with the guidelines was inexcusable. In this connection, we noted that HA had introduced measures to strengthen supervision of mortuary attendants.

7. HA had responded promptly to the incident by setting up an Investigating Panel and undertaking a series of measures to improve mortuary services.

8. Given HA's proactive and positive efforts, The Ombudsman decided not to initiate a full-fledged direct investigation. We would monitor HA's full implementation of the improvement measures.

Annex 14

Summaries of Selected Direct Investigation Assessments

IMMIGRATION DEPARTMENT ("Imm D")

Case No. OMB/DI/176

Immigration Department Application Forms for Foreign Domestic Helpers

(Assessment commenced on 1 November 2007 and completed on 18 March 2008)

Background – Media Criticism and Imm D Review

In response to media criticism in October 2005, Imm D had reviewed its multitude of application forms for foreign domestic helpers and concluded that five forms could be combined into one for visa or extension of stay application.

Delay in Implementation

2. Imm D's intention then was to introduce the new form in tandem with the roll-out of its new Permits and Visas Application System ("P&V System"), scheduled for late 2006. The aim was to minimise confusion to the public and waste of the existing forms.

3. However, up to October 2007, no change had taken place, thus attracting further media criticism and this Office's direct investigation assessment.

4. We found that as the contractor for the new P&V System had four times postponed the roll-out date of the System, Imm D had deferred the introduction of the new form.

Our Comments

5. We appreciate the need to minimise waste. We also accept that if possible, coinciding the launch of the new form with the new P&V System would have made for operational convenience. However, Imm D's action in putting the scheme on hold for nearly two years had resulted in unduly prolonged public inconvenience.

6. Imm D could, and should, have introduced the new form on its own in the light of the P&V System contractor's repeated postponement. This would have provided much earlier relief to the public.

Conclusion

7. Nonetheless, as the new form and a guidebook had been introduced in February 2008, The Ombudsman decided that a full-fledged direct investigation was not warranted.

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

Cases Concluded under Rendering Assistance/Clarification

CORRECTIONAL SERVICES DEPARTMENT ("CSD")

Case No. OMB 2006/4171

Supplies to inmates – refusing to provide additional blankets

The Complaint

Having served some years of his sentence in Thailand, the complainant was repatriated to Hong Kong for continued imprisonment in a CSD institution. Used to much warmer climate, he asked the management for more blankets. However, the latter rejected his request in the absence of support from the resident doctor.

Acting According to Rules

2. CSD indicated that the management would determine the number of blankets to be issued to inmates according to the location of the institution, the general age profile of the inmates and seasonal changes. Subject to the doctor's recommendation, additional blankets would be provided to individual inmates. This would ensure fair and equal treatment of all inmates and help maintain order and discipline.

3. In this case, the doctor had examined the complainant, but had no specific health reason to justify his request for additional blankets. Nor had the complainant subsequently fallen ill. Later, as the weather turned cold, the management took the initiative to issue one more blanket to every inmate, making a total of four.

Our Comments

4. In principle, CSD had a duty to ensure fair and equal treatment for inmates and proper use of supplies. The way the management handled the request was in keeping with the Prison Rules.

5. However, as the complainant had stayed in a tropical country for many years, he might be particularly sensitive to low temperatures. His request for additional blankets might well be out of genuine need. The management ought to have exercised discretion to cater to the special needs of individual inmates.

CSD's Follow-up

6. This Office was pleased that CSD had reviewed its measures and reminded the officers-in-charge and doctors of all its institutions to be flexible when handling similar cases.

A case of lack of consideration

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

ENVIRONMENTAL PROTECTION DEPARTMENT ("EPD")

Case No. OMB 2007/0017

Smoky vehicle control – (a) arbitrarily appraising a van as emitting excessive smoke and demanding an emission test; and (b) making inaccurate measurements at a Vehicle Emission Testing Centre

The Complaint

An EPD smoke spotter had reported the complainant's van as emitting excessive smoke. Subsequently, the complainant received from EPD an Emission Testing Notice demanding that his van be tested at an approved Vehicle Emission Testing Centre.

2. His van was tested at Centre A, but failed thrice. Later, at Centre B, it passed the test.

3. The complainant alleged that the EPD spotter had made a subjective judgement with the naked eye resulting in EPD demanding an emission test. He also criticised the inaccurate measurements at Centre A.

Spotters System

4. According to EPD, all its spotters have received specialised training and passed examinations. They are able to judge with the naked eye whether smoke emission from a vehicle exceeds the statutory level. Vehicle owners dissatisfied with their appraisal could raise an objection with EPD. A spotter will be disqualified if his performance is proved sub-standard.

Emission Test

5. To pass an emission test, a vehicle has to meet the requirements as regards wheel power, smoke level and engine speed.

Complainant's Test Results

6. EPD stated that the complainant's van had failed in smoke level and engine speed during the three tests at Centre A. At Centre B, its engine speed was still below requirement and it should have been considered "Failed". Nevertheless, EPD let it pass as a transitional arrangement to allow the complainant time to repair his van.

Accurate Measurements

7. EPD's inspection of the records and computer data at Centres A and B confirmed both their emission testing systems to be normal and the results of the four tests accurate. The difference in test results might have been due to the ageing engine of the van affecting its performance.

Our Comments and Suggestions

8. We considered the current arrangements of EPD adequate in preventing incorrect appraisal of vehicles by spotters.

9. The results of the four tests showed that the complainant's van was not mechanically sound and EPD had been correct in demanding an emission test.

10. Centre B had actually stamped the Emission Test Form with a remark that while the engine speed of the complainant's van did not meet the test requirements, "EPD however allows the vehicle to pass the test as a transitional arrangement. Vehicle owner should take remedial action where necessary". These words might have escaped the complainant's attention because the stamp was blurred.

11. Nevertheless, the Certificate of Compliance for Motor Vehicles issued to the complainant by Centre B stated that its purpose was to inform the vehicle owner that "his/her vehicle had passed the vehicle emission test". Such wording might give the vehicle owner a wrong impression that there was no need to repair the vehicle. We, therefore, suggested that EPD review this.

12. We also proposed that EPD should consider imposing a deadline for repair on vehicles that have not fully passed emission tests as in this case.

13. EPD agreed to review both matters.

A case of misleading information

FIRE SERVICES DEPARTMENT ("FSD")

Case No. OMB 2007/0200

Tree removal – refusing to remove a fallen tree

The Complaint

The complainant found a fallen tree having been lying across a footpath in a village for over a year, but FSD refused to remove it.

Not Quite FSD's Responsibility

2. FSD explained that its resources are devoted to fire-fighting, rescue and fire prevention. In carrying out these duties, FSD might exercise its power under the Fire Services Ordinance to remove obstacles.

3. Fallen trees not posing danger to life or property are, however, handled by other departments according to the circumstances. FSD will definitely render assistance if a fallen tree is found to cause danger.

4. In this case, FSD found that the footpath was not a main access road and the tree posed no immediate danger. Moreover, as the tree was on private land, the owner should be responsible for removing it. FSD, therefore, refused to take action.

Laudable Assistance by Civil Aid Service ("CAS")

5. Later, CAS offered help by cutting up the tree for removal by the villagers.

Our Comments

6. We highly commended the enthusiasm of the CAS volunteers.

7. Strictly speaking, while it is not FSD's responsibility to remove fallen trees like this, the tree had been left unattended for over one year and the Agriculture, Fisheries and Conservation Department had rated it as posing "potential danger". We, therefore, considered that as a regular force dedicated to serving the community, FSD should have exercised flexibility and been more forthcoming.

8. We are pleased that FSD had taken reference from this case, drawn up relevant guidelines and provided training as well as additional equipment for staff to deal with such situations.

A case of lack of helpfulness and flexibility

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2006/2082

Complaint handling – failing to handle properly a complaint about canned soft drinks

No Response from Either Department

The complainant bought a few cartons of canned soft drinks from a supermarket. One of them had a tiny metal scrap sticking out from the edge near its flip opening. His mouth was thus injured when he drank from the can. He enquired with the then Health, Welfare and Food Bureau ("HWFB") about laws on consumer protection and channels for complaint and claims for damages.

2. Upon referral by the then HWFB, FEHD acknowledged receipt of the complaint and informed the complainant that as the matter involved consumer product safety, it would be referred to the Customs and Excise Department ("C&ED") for follow-up action. However, the complainant alleged that he did not hear further from FEHD since.

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

FEHD Assuming Action by C&ED

3. Upon receipt of the complaint, FEHD had raised with C&ED the jurisdiction for the case. Meanwhile, legal advice was that the complaint was outside FEHD's jurisdiction as it involved defective container. FEHD thus issued a memo asking C&ED to take follow-up action.

4. FEHD explained that in general, the department responsible for investigation of a complaint would reply to the complainant direct. As the FEHD staff did not receive any further enquiries from the complainant, he assumed that C&ED had followed up the case.

C&ED Assuming Action by FEHD

5. C&ED staff had answered FEHD by email that the complaint was not within its jurisdiction. Since then, the Department never received any further response from FEHD, nor did it receive the memo from FEHD cited above. C&ED, therefore, assumed that the case was already taken up by FEHD and took no further action.

Inadequate Communication

6. This Office considered that there was inadequate communication and coordination between FEHD and C&ED in handling the complaint. FEHD had failed to follow the progress of the case and assumed it had been taken up by C&ED even though the latter had repeatedly indicated that the matter was not within its purview. There was indeed deficiency on the part of FEHD. Furthermore, the Department had failed to keep the complainant posted.

7. We could not ascertain whether C&ED had received the memo issued by FEHD. However, the FEHD staff should have known the stand of C&ED, i.e. that it would not take up the complaint. We found FEHD's explanation far-fetched that it had assumed the case to be taken up by C&ED simply because no further enquiries were received from the complainant.

Need to Safeguard Public Interests

8. Whilst both departments lacked the necessary legal justification to follow up the complaint, we considered Government to have the responsibility to safeguard public interests and that FEHD should promptly issue a letter to the manufacturer of the soft drinks concerned to remind them to pay greater attention to the safety of metal cans for beverages.

9. FEHD accepted our suggestion and subsequently issued an advisory letter to the manufacturer.

A case of lack of communication and coordination

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2006/2097

Complaint handling – impropriety in handling a complaint of suspected food contamination and failure to respond to the complainant's letter

Suspected Food Contamination

The complainant's wife bought a carton of milk from a supermarket in October 2004. Their little daughter fell seriously ill after drinking some of the milk. Suspecting that the milk, which tasted bitter, was contaminated, the complainant lodged a complaint with FEHD. After investigation, FEHD replied substantively in May 2005, that there was insufficient evidence of the milk having deteriorated at the time of purchase. Nevertheless, warning letters were issued to the importer and the vendor, reminding them to ensure that all food products on sale should be of the quality and substance demanded by purchasers.

2. The complainant was dissatisfied that FEHD had delayed in completing chemical tests for sourness and pesticides on milk samples collected from his home and the supermarket. He also considered the tests irrelevant as he suspected the milk had been contaminated by cleaning chemicals during packaging. So he wrote to FEHD again in June 2005. The Department gave an interim reply but no further reply followed.

FEHD's Investigation

3. FEHD investigation of food complaints included checking the same products and the premises concerned, to ensure that the complaint was not due to systemic problem during food production or at the point of sale. The time required by the Government Laboratory ("Govt Lab") for testing a food sample depended on the complexity of the chemical analysis necessary.

4. After investigation, FEHD found neither sufficient evidence nor a reasonable prospect for conviction of the importer or vendor. FEHD considered that its staff had followed the departmental procedures in dealing with the complaint and had already given the complainant a substantive reply after due investigation into the case.

5. We noted that FEHD had generally followed its established procedures in handling the complaint. However, after receipt of the Govt Lab's first analysis report, it had taken about one month to seek further information from the importer/vendor on the milk product. It had also taken over two months, after receipt of the Govt Lab's final report on pesticides analysis, to give the complainant a substantive reply.

6. We recommended that FEHD handle food complaints and reply to complainants promptly in future. It should set a time frame for respective stages of complaint processing.

Complainant's Subsequent Letter

7. FEHD admitted to having mislaid the case file and failing to reply to the complainant's subsequent letter until this Office initiated inquiries into the case in July 2006. For this, FEHD apologised to the complainant in writing, indicating also that it had warned the staff concerned and put in place administrative procedures to prevent delay in processing food complaints.

8. In this connection, we examined FEHD's so-called "monitoring" measure and found it to be just a monthly return on the total number of food complaints received for the information of senior officers of the Food Surveillance and Complaint Section. We considered such data inadequate for proper monitoring and recommended that FEHD devise an effective system for the intended purpose.

Tests on Food Samples

9. FEHD re-examined its referral procedures to Govt Lab for analysis of food samples: where a complainant claimed to be sick after consuming certain food, FEHD officer would ask the complainant to seek medical advice on any suspected causative agent(s) and convey the same to Govt Lab for consideration of the appropriate test(s).

10. Decisions on tests to be administered on food samples involve professional judgement, not an administrative matter *per se*. We were, therefore, not in a position to comment. Nonetheless, we considered the proposal for providing relevant medical advice, if available, to Govt Lab Chemists to facilitate their decision a sound measure.

11. We consulted Govt Lab on this complaint and noted with concern that Govt Lab concurred with the complainant that the pH value/acidity tests served little purpose in this case, because the carton of milk had already been opened for seven days. Such a view was at variance with FEHD's account that the tests had been conducted on the expert advice from a Govt Lab Chemist.

12. We then examined the "Statement of Food Complaint", completed by the complainant's wife, reporting the date of opening and consumption of the carton of milk and its bitter taste. We also examined the "Application for Analysis of Sample/Specimen", completed by the FEHD officer on the same day, indicating that the "analysis required" was "pH value and titratable acidity", without reference to the Chemist's advice as claimed. Neither did the officer complete the section on the circumstances and background to the test.

13. In the circumstances, we were concerned that the FEHD officer might have omitted information crucial to the Chemist and whether such omission could have been avoided if the "Statement of Food Complaint" had also been submitted to the Chemist together with the milk sample for analysis. In this connection, we recommended that FEHD submit relevant parts of the statement to Govt Lab for reference and require staff to complete the "Application for Analysis of Sample/Specimen" properly.

14. On the complainant's view that the milk sample should have been tested for cleaning chemicals in the light of a worldwide history of milk contamination by such materials in packaging, we considered that FEHD, with responsibility for food safety in Hong Kong, should have built up a database on such matters and be able to recommend to Govt Lab specific tests on a food sample to detect foreign substances that might have been acquired during the production process. We recommended that FEHD establish a database on food safety matters and draw the attention of Govt Lab and other food testing organisations to relevant issues where appropriate.

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD")

Case No. OMB 2007/1658

Fixed-pitch hawkers – failure to follow up a complaint and delay in giving a reply

The Complaint

The complainant had telephoned FEHD repeatedly about the unauthorised letting of three fixed pitches by their licensees. A staff member of FEHD had undertaken to follow up his complaint but did not reply.

Regulation of Fixed-pitch Hawkers

2. Under the Hawker Regulation, no person shall use a fixed pitch unless he is the holder of a fixed-pitch hawker licence. Moreover, the licensee must personally conduct or supervise the operation of the business. He may employ assistants but an assistant cannot engage in hawking in the absence (unless for good reason) of the licensee. Otherwise, the assistant may be prosecuted for illegal hawking.

Was the Complaint Received?

3. FEHD confirmed that all the pitches had valid licences and the licensees were allowed to hire assistants. The Department had no record of having received the complaint but the two telephone numbers mentioned by the complainant were those of the office and a staff member's personal mobile telephone.

4. The staff member concerned submitted a written statement that he had not received the telephone complaint. However, when on patrol one day, his mobile telephone received a call without display of the caller's number, alleging that the licensees of some fixed pitches in a certain street had violated the Regulation. Because of the noisy surroundings, he could not get the details from the caller. Nevertheless, he asked his staff whether there were any irregularities at the place mentioned and learned that none had been detected during their routine patrols. As the complaint lacked details, he could not follow up the case and kept no record.

5. FEHD considered that the staff should have opened a file to record clearly the complaint and any action on it.

6. The Department maintained that it had never received the complaint. However, on learning of it, an investigation was conducted and the complainant contacted by telephone to explain the legislation and the policy.

7. We noted the complainant's detailed description of the incident, particularly his accurate recollection of the office and mobile telephone numbers. Consequently, despite FEHD's denial, we considered it reasonable to believe that FEHD had indeed received the complaint but had failed to respond.

Was the Regulation Breached?

8. FEHD indicated that in the routine patrols for the past year or so, the licensees involved had personally operated their business without contravening the licensing conditions. Furthermore, several special patrols had subsequently been conducted and no irregularities were found.

9. We examined the hawker licences of those fixed pitches and made two site inspections. We found the three pitches to be in business but the operators there all looked different from the pictures of the registered holders on the licences.

10. The complainant later provided us with supplementary information stating that as two of the licensees had been living in the Mainland for a long time, they could not possibly conduct or supervise their business personally as required. However, after checking with the Immigration Department, FEHD found such allegation to be untrue.

11. We considered that FEHD should nevertheless closely monitor the situation, step up their inspection and check the identity of the operators against the licensees to guard against unauthorised letting activities.

12. FEHD undertook to monitor the situation closely and gave appropriate instructions to the staff concerned.

A case of failure to follow procedures and delay

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD"), BUILDINGS DEPARTMENT ("BD") AND WATER SUPPLIES DEPARTMENT ("WSD")

Case Nos. OMB 2007/3947-3949

Seepage complaint – shirking responsibilities and failing to resolve seepage

The Complaint

The complainant lodged a complaint with FEHD for water seepage in her bathroom. The Department referred her case to BD and WSD for action. However, the problem dragged on for more than a year without

resolution. She then complained to this Office against the departments and the Joint Office ("JO") staffed by BD and FEHD, for improper handling of her complaint, shirking of responsibilities and lack of response to her enquiries.

Response from FEHD/JO

2. FEHD staff had followed departmental guidelines and procedures in handling the complaint and had kept the complainant informed of the test results. They had issued a "Notice of Intended Entry" in good time to facilitate BD's consultant gaining entry to the flat above the complainant's for testing.

Response from BD/JO

3. The complainant alleged that her repeated calls to the consultant and JO for investigation results were not answered. BD stated that JO had no records on the complainant's enquiries, while its consultant failed to address this issue upon JO's enquiry on the matter.

4. On the complainant's allegation that the tests conducted by the consultant were worse than those by FEHD and failed to identify the source of seepage, BD maintained that JO and its consultant had handled the case according to established procedures and guidelines. BD reckoned that the long time taken on the case was due to the consultant's incompetence and the difficulty in gaining entry to the unit above for testing. Consequently, BD decided not to re-appoint the consultant. Meanwhile, JO would continue to follow up the case.

Response from WSD

5. The complainant alleged that WSD had handled her complaint perfunctorily. WSD indicated that as the FEHD report on its initial investigation showed no evidence of leakage of water pipes or water wastage at the unit above, further investigation was not warranted. As the situation had remained unchanged on FEHD's second referral, WSD maintained its original decision and issued a quick reply to the complainant.

Observations and Opinions

6. Seepage can be distressing to those affected. However, maintenance of private buildings (including resolving seepage problems) is basically the responsibility of property owners. The parties concerned should work together to resolve the problem and to eradicate the cause. The affected party should enlist professional help and, if necessary, may resort to civil action.

7. We considered that FEHD and WSD had handled this case within the limits of their statutory powers and in accordance with established procedures. However, the overall operation of the newly established JO and the coordination among departments would bear improvement. We have made suggestions to the departments concerned and initiated a direct investigation into the work of JO.

8. Nonetheless, we were deeply concerned about BD's supervision of its consultant, including the latter's attitude and efficiency in handling the case. The consultant inspected the complainant's unit and the unit above only after months of assignment and submitted an incomplete report five months after testing at the unit above. It had also failed, despite repeated requests from JO, to revise the report and to address JO's enquiries about its handling of the complainant's telephone enquiries. The case, therefore, remained unsettled.

9. We considered that BD had not supervised its consultant adequately and suggested improvement measures. BD responded positively to our suggestions on enhancing control over its consultants, by providing in the new consultancy contract timeframes on critical stages and drawing up departmental guidelines to appraise consultants' performance.

A case of negligence

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND DEPARTMENT OF JUSTICE ("D of J")

Case Nos. OMB 2006/4476; OMB 2007/0177

Handling of littering case – (a) coercing the informer to provide personal information and to appear in court as witness; and (b) failing to give reasonable explanation for withdrawal of prosecution

The Complaint

The complainant reported to FEHD a case of littering from vehicle. At the request of FEHD, he went to its office to sign a document to be submitted to the court but was then forced by a staff member, with threatening words, to provide his residential address and to give evidence as witness when the case went to court. The complainant then applied to his employer for leave, but was told three days later that FEHD had applied to withdraw the prosecution because D of J considered there to be insufficient evidence.

2. The complainant was dissatisfied for having been forced into providing personal information and agreeing to give evidence in court, only to be informed afterwards that the prosecution was withdrawn. He also claimed that FEHD had failed to explain in detail why the charge had been dropped. He lodged a complaint through the Government Integrated Call Centre ("ICC") and demanded a detailed explanation but to no avail. He then complained to this Office against FEHD and D of J.

Coercion Denied

3. The FEHD staff member who had handled the case denied having threatened or forced the complainant to provide information or to appear in court as witness. After investigation, FEHD found no evidence of human error involved but advised the staff concerned to explain clearly departmental policy and work procedures when handling public complaints or enquiries in future to avoid misunderstanding.

Procedures Followed

4. Regarding the complaint lodged through ICC, FEHD claimed that its district office staff had followed established guidelines. Moreover, he had informed the complainant of latest developments of the case and apologised for the inconvenience caused.

5. On the decision to withdraw prosecution because of insufficient evidence, FEHD explained that the Department had followed the relevant procedures in collecting information, instituting prosecution and consulting D of J. The decision was made after considering the advice from D of J.

Reason for Early Notification Explained

6. FEHD explained that notifying the complainant to prepare for the trial while seeking legal advice from D of J was intended to save time, but the Department agreed that such practice might seem premature to the complainant. To avoid any misunderstanding in future, FEHD instructed staff to confirm the decision to prosecute before asking the informer to give evidence in court. FEHD apologised to the complainant.

D of J Advice

7. D of J explained that under normal circumstances, FEHD could decide on its own whether prosecution should be instituted, but could also seek legal advice where necessary to check whether there was sufficient evidence. In this case, FEHD had started the prosecution before approaching D of J for advice. After studying the case, D of J advised that there was insufficient evidence.

Our Comments and Conclusion

8. In the absence of independent evidence, this Office could not determine whether the FEHD staff had forced the complainant to disclose his address. However, we considered that the provision of personal information when reporting a case of littering from vehicle should be voluntary and that FEHD staff should explain to the complainant the pros and cons of providing such information. Moreover, FEHD should wait for legal advice from D of J to confirm whether there is prima facie evidence to proceed with the prosecution before asking the complainant to attend court.

9. As legal proceedings and prosecution decisions are not subject to our investigation, we would not comment on this. In view of the lawyer-client privileged communication (between D of J and FEHD), we considered that FEHD had already provided as much information as possible to the complainant. In any case, whether there was sufficient evidence to pursue the case involved professional judgement beyond our purview.

A case of inconsiderate procedures

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

FOOD AND ENVIRONMENTAL HYGIENE DEPARTMENT ("FEHD") AND FIRE SERVICES DEPARTMENT ("FSD")

Case Nos. OMB 2007/3854-3855

FEHD – restaurant licence application – requiring an applicant to produce a valid Annual Fire Inspection Certificate, while other restaurants in the building could continue to operate without it

FSD – monitoring of fire safety – failing to conduct timely inspection and allowing delay in repairs to fire service installations

The Complaint

The complainant applied to FEHD for a general restaurant licence to start operation in a building and the Department required a valid Annual Fire Inspection Certificate ("AFIC") of that building. However, he considered that unfair as other restaurants in the building were allowed to continue operation even though the AFIC had long expired.

2. Moreover, FSD did not conduct any inspection of the building until some seven months after the expiry of the AFIC. During the inspection, non-compliance was found in the fire service installations. FSD asked the Owners' Corporation ("OC") of the building to repair the installations within 30 days, but later extended the deadline to 60 days. The complainant was dissatisfied that FSD's delay had affected FEHD's processing of his licence application.

Annual Inspection Required

3. Under the Fire Service (Installations and Equipment) Regulations, the owner of any fire service installations shall have them inspected by a registered contractor at least once every 12 months. The contractor shall afterwards issue an AFIC to the owner, with a copy to FSD.

4. FSD requires applicants for general restaurant licence to comply with all fire service regulations, before issuing to them a Fire Service Certificate ("FSC").

FEHD's Requirement Legitimate

5. FEHD had acted according to the law in requiring the complainant to produce an FSC, while the AFIC referred to by the complainant was one of the criteria for the issue of such a certificate. As proper fire service installations are essential to the safety of customers as well as residents, this Office considered FEHD's requirement legitimate and reasonable.

But Little Concern for Overall Safety

6. As to the complainant's allegation that other restaurants in the building were able to operate without a valid AFIC, this Office questioned whether FEHD should have turned a completely blind eye to the issue of overall safety, even though allegedly it does not have the power not to renew their restaurant licences based on their lack of a valid AFIC.

7. The Ombudsman, therefore, decided to make further inquiries separately.

FSD's Delay and Lack of Internal Coordination

8. FSD explained that as it had to handle a huge number of AFICs every year, it could only conduct random checks. The building in question had not been selected for checking. Upon receipt of the complainant's complaint, the Department conducted an inspection and then issued a warning letter to the OC, requiring repairs to the fire service installations within 28 days. The OC requested an extension to allow time for convening a management committee and an owners meetings. Three weeks after a further inspection, FSD issued a notice to the OC demanding repairs within 60 days with a prosecution warning.

9. This Office found the three weeks' delay unreasonable. Furthermore, while we appreciate FSD's resource constraint, it was indeed worrying that the owners of some buildings not selected for checking by FSD might choose not to maintain their fire service installations in good working condition, thus posing a serious safety problem. We, therefore, urged FSD to revise its procedures, issuing repairs notices to building owners immediately upon receiving inspection reports from the contractors concerned.

10. This Office also noted that the Licensing and Certification Command and the Fire Service Installation Task Force under FSD were respectively responsible for processing restaurant licence applications and inspecting fire service installations. In this case, although the former had found irregularities in the fire service installations, they failed to alert the latter such that the latter only took up the case upon receipt of the complaint. This reflected that internal communication and coordination was seriously lacking in FSD.

11. FSD accepted our suggestions and introduced a new notification system to enhance its internal coordination and communication.

A case of delay, inadequate coordination and lack of concern for public safety

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

FORMER EDUCATION AND MANPOWER BUREAU ("EMB")

Case No. OMB 2007/2793

Substitute staff – impropriety in processing an application from a special school for hiring a substitute nurse

Nursing Care Affected

The complainant's daughter attended a special school, where the school nurse had suffered from threatened abortion and had to go on bed rest. However, the former EMB (reorganised as the Education Bureau ("EDB") since 1 July 2007) insisted on the school hiring a substitute nurse direct and not through an intermediary (such as a medical service organisation). Consequently, the school could not find a suitable substitute and the nursing care was affected. The complainant considered that her daughter had fallen victim to such a rigid system.

The Rules

2. The school head had enquired about the hiring of a substitute nurse. An EMB officer had then replied by reference to a circular that the school had to verify the information and *curriculum vitae* provided by a prospective substitute nurse so as to set the daily rate payable from Government subsidy for "salaries". The school head had also to inform the substitute nurse the detailed terms of employment. Moreover, the wages had to be paid directly to the substitute nurse, and not to an intermediary organisation. The measures aimed to ensure the quality of service and good communication between the nurse and the school.

3. As the school nurse in this case had taken only 15 days sick leave intermittently, the then EMB maintained that the school should adhere to the Code of Aid for Special Schools and the circular above. This meant hiring a temporary substitute nurse to be paid at a fixed daily rate.

Some Flexibility Introduced

4. Recognising the recent shortage of nurses, EDB decided to allow flexibility in hiring substitute nurses by permitting schools, from the school year 2007/08, to use its cash subsidy to hire substitute nurses or nursing services.

Further Flexibility Suggested

5. We noted that, although the school nurse's sick leave totalled only 15 days intermittently, she might need bed rest before delivery and hence would require leave for several months. In such event, EDB should consider allowing the school to pay a substitute nurse on a monthly salary.

6. The Bureau's circular did not explicitly prohibit special schools from hiring a substitute nurse through an intermediary organisation. In fact, schools could sign a service contract with such organisations to act for them

to verify the qualifications of a prospective substitute nurse. Since medical service organisations had a list of candidates, it would be much easier and more efficient to search for suitable substitute nurses through them.

7. In this light, EDB should state in the circular that schools could hire substitute nurses through an intermediary organisation and should provide them with clear guidance for implementation.

8. EDB implemented all these suggestions.

A case of inflexible procedures

HONG KONG EXAMINATIONS AND ASSESSMENT AUTHORITY ("HKEAA")

Case No. OMB 2007/2534

Marking of examination scripts – impropriety in marking the scripts of two subjects in the Hong Kong Advanced Level Examination

The Complaint

The complainant sat for the 2007 Hong Kong Advanced Level Examination ("HKALE"). He alleged that HKEAA had improperly handled the marking of the examination scripts of the following two subjects:

(a) a task in Section E of the subject Use of English ("UEE Paper"); and

(b) the last section of Paper 3 of the subject Chinese Language and Culture ("Chinese Paper 3").

UEE Paper

2. Candidates taking the 2007 UEE Paper were asked to write a letter of not more than 500 words, failing which they would not score the two bonus points in "word limit" the same way as with the 2006 UEE Paper. However, the marking scheme was revised after the examination such that answers would be marked only up to the limit of 500 words. Beyond that part, candidates would not score points even for content.

Chinese Paper 3

3. It was stated in the examination paper that all questions must be answered and points would be deducted for a wrong answer, with no mention of what would happen if a question was unanswered. The complainant was dissatisfied with HKEAA's response to his enquiry that no points would be deducted for unanswered questions as unanswered questions meant failure to meet the requirement of answering all questions and so points should be deducted. He considered that HKEAA should have stated this criterion in the examination paper.

Response from HKEAA

UEE Paper

4. A major aim of the UEE Paper was to assess whether candidates could apply their English language skills and write accurately in work and study situations. The ability to present ideas effectively within the 500-word limit was an integral part of the assessment.

5. The marking scheme for an examination paper was developed alongside the setting of the paper and thus varied from year to year. HKEAA had all along advised teachers and students not to use any past marking scheme as a model for future examination papers.

6. Marking schemes were also subject to amendments and refinements after the examination, with reference to the specific circumstances of candidates' performance and behaviour in the examination. This was in line with international practice and HKEAA's established procedures, details of which had been published for general information.

7. It was, therefore, impossible to inform candidates of the marking schemes in advance, though they would be released some six months after the examination in the *"Examination Reports and Question Papers"* of individual subjects published for sale.

8. For the 2007 UEE Paper, the panel of markers found that a large number of candidates had written well above 500 words. As giving them marks would be tantamount to "rewarding" poor examination practice and defeat the purpose of assessing candidates' ability through the examination, the panel decided not to give "content" points to the part of an answer that had significantly exceeded the word limit. However, the full answers would still be assessed for the candidates' overall presentation skills.

Chinese Paper 3

9. The requirement that "all questions must be answered" was set *vis-à-vis* other examination papers, such as composition, which allowed candidates to choose one from a number of questions. As such, leaving a question unanswered did not breach the examination rules but would simply score no point.

Our Observations and Comments

10. The design of marking scheme for an examination paper involved professional judgement. It was not an administrative matter and we would comment only on HKEAA's practices and procedures.

Public Expectation

11. For the UEE Paper, we could understand why HKEAA expected candidates of HKALE, a high-stake examination, to keep within the word limit and imposed a penalty for non-compliance, namely, to ensure that individual candidates would not gain an unfair advantage over others by breaching the examination rules.

12. However, with the marking scheme being published year after year for reference by teachers, students and others, there would be understandable (albeit unjustified) expectations by some candidates that a similar marking scheme would be adopted for the following year, unless a change was announced beforehand or clearly indicated in the examination papers, especially for such a significant one in this case.

13. As regards Chinese Paper 3, while it was common sense that unanswered questions would neither score nor lose points, we noted the concern raised by the complainant.

Clearer Guidelines Needed

14. To avoid future misunderstanding or dispute, HKEAA should indicate in the candidates' handbook and the appropriate examination papers any part of the answers significantly exceeding the prescribed word limit as not scoring content points and how unanswered questions will be marked.

INLAND REVENUE DEPARTMENT ("IRD")

Case No. OMB 2007/3240

Application for exemption – failing to follow up the complainant's application for waiver of Business Registration Fee

The Complaint

In June 2005, the complainant applied to IRD by surface mail for exemption from payment of Business Registration Fee for that year but received no reply. In early April 2006, she again applied to IRD, this time by fax, and at the same time applied for further exemption for the ensuing year. Thereafter, she telephoned the Department for enquiries. The staff replied that if they did not receive the two applications, they would certainly contact her. Yet, she never received any notification from IRD.

2. In May 2007, the complainant went to IRD in person to enquire about the progress of her applications but the staff indicated that they had never received those applications. The complainant considered that there was dereliction of duty on the part of the staff in failing to follow up her applications.

Different Version from IRD

3. IRD had never received the two applications mentioned by the complainant. Nor had it received the alleged telephone enquiries. It was, therefore, not able to take any follow-up action.

4. Photocopies of the application forms provided by the complainant showed that they were an amended version. However, amendment of the form started only in March 2006 and IRD did not distribute the new form until June 2006. In other words, forms issued before June 2006 were old version.

5. IRD could not understand how the complainant was able to obtain and fill out the new forms before they were issued. IRD, therefore, doubted the honesty of her allegations.

Complaint Dubious

6. The complainant maintained that she had used the old forms for her applications. However, as the original forms had become blurred, she completed the information on the new form again to lodge her complaint. The complainant undertook to provide this Office with one of the original blurred applications by post for our reference. However, the documents never reached this Office.

7. We considered the complainant's explanation about the blurred forms hard to believe. Moreover, she had not mentioned this when she lodged the complaint with us. We, therefore, shared IRD's view and doubted the veracity of her allegations.

A case of dubious allegation by the complainant

JUDICIARY, LEGAL AID DEPARTMENT ("LAD") AND LABOUR DEPARTMENT ("LD")

Case Nos. OMB 2006/4353-4354; OMB 2006/4440

Judiciary and LAD – legal aid application – shifting responsibility when handling the complainant's application

LD – claims for wages – mistaking the complainant's two former employers to be the same person

The Complaint

The complainant sought payment of his holiday wages in arrears from his former employers through LD. A conciliation meeting was arranged by LD. However, his former employers failed to attend. The complainant then filed a claim with the Labour Tribunal ("the Tribunal") under the Judiciary and won the case. On his former employers' refusal to pay, he applied to LAD for legal aid to present a winding-up petition against them.

2. LAD found that the "defendant" in the Tribunal Order actually involved two companies. The complainant was thus advised to approach the Tribunal to have the Order amended. However, the Tribunal staff demanded a written request from LAD. The complainant felt aggrieved that LD had mistaken his two former employers to be a single one when referring his case to the Tribunal. He also complained that the Tribunal and LAD had shifted their responsibility onto each other when handling his application for legal aid.

No Mistake by LD

3. LD pointed out that the complainant had indicated his employment by two separate companies and presented his “employer’s returns of remuneration” from them. LD staff explained the procedures and reminded him to check the registered addresses of the two companies at the Companies Registry for the Tribunal’s records.

4. This Office considered LD to have stated clearly the names of the two companies as the “defendant” when referring the case to the Tribunal. LD had made no mistake.

Impartiality of Judiciary

5. Upon receipt of LD’s referral, the Tribunal staff started drafting the claim form and asked the complainant about the connection between the two companies. The complainant explained that the company had changed its name but did not indicate that they were two separate companies.

6. Subsequently, the complainant telephoned the Tribunal staff to apply for an amendment of the name(s) of the “defendant” in the Order. As he could not state clearly the amendment required, the Tribunal staff suggested that he obtain documentation from LAD to facilitate his application.

7. This Office considered that as the complainant had checked the content of his claim form and signed on it, the Tribunal staff should not be blamed for the mistake in the name(s) of the “defendant”. Furthermore, the Tribunal staff had to be impartial and should not advise any party how to amend the Order. They could only offer explanation and assistance on matters of procedures.

Prompt Response from LAD

8. LAD pointed out that as the particulars of the “defendant” provided by the complainant did not tally with the company registration search results, the complainant would encounter legal problems in presenting the winding-up petition to execute the Order. A LAD lawyer had explained to him the need to amend the Order. However, the complainant had never mentioned the Tribunal’s request for a letter from the Department before amending the Order for him. Had he cited such a request, LAD would certainly have obliged.

9. As the complainant had no concrete evidence that he had raised such a request with LAD, this Office could not make any judgement on this. Nevertheless, upon our inquiry, LAD promptly responded and prepared the letter required for the Tribunal’s follow-up action.

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

OFFICIAL RECEIVER'S OFFICE ("ORO")

Case No. OMB 2007/0389

Insurance policy – (a) unreasonably requesting the insurance company to terminate the complainant's policy; and (b) misleading the complainant that his insurance policy would not be terminated and realised

The Complaint

A bankruptcy order was made against the complainant by the court with ORO being appointed as the receiver ("Trustee") of his property. The complainant had all along taken out a life insurance policy with savings. The beneficiary under the policy was originally the complainant's mother but later changed to his wife. An ORO officer told the complainant that his policy would not be terminated and realised by the Trustee as a result of the bankruptcy order if the beneficiary was his wife. In this context, the complainant's wife continued to pay the premiums for the insurance. However, the complainant was later notified in writing by the insurance company that the policy had been terminated and realised by the Trustee. The complainant thus considered himself to have been misled by the ORO staff, resulting in unnecessary payment of several months' premiums by his wife.

Termination of Policy

2. As Trustee, ORO could realise the bankrupt's assets to settle fees and charges and repay debts in relation to the bankruptcy. If the bankrupt had taken out life insurance with savings, ORO could realise the residual value of the policy.

3. The complainant had stated in his Statement of Affairs that the beneficiary under the policy was his wife. Section 13 of the Married Persons Status Ordinance stipulates that if a policy of assurance or endowment is expressed to be for the benefit of the spouse or children of the insured, then the moneys payable under the policy shall not form part of the estate of the insured (the complainant and bankrupt in this case). In other words, the value of the complainant's policy would be protected under the Ordinance and should not be subject to the debts owed by the complainant. However, the complainant had changed the beneficiary under the policy from his mother to his wife within five years before he filed for bankruptcy. ORO considered that such change constituted a transfer of assets made in the manner of "a transaction at an undervalue" and could be deemed invalid. Thus, ORO was empowered to request the insurance company to terminate the policy and remit the residual value to ORO.

No Misleading Statement

4. With regard to the allegation that the complainant had been misled by ORO staff, ORO could not verify it because the staff in question had already resigned. However, judging from the relevant letter issued by that staff to the insurance company, ORO believed that the staff was at that time checking the contents of the policy and had not yet decided how it should be handled. It was unlikely, therefore, that any conclusion or commitment had been made.

5. Moreover, as the staff in question had assigned a wrong file number to the letter concerned and misplaced the reply from the insurance company in another case file, the matter on the policy was not followed up promptly. ORO had, therefore, reminded all staff handling cases to take reference and ensure correct use of file numbers and proper filing.

6. ORO had reimbursed the complainant the premiums paid by his wife for the period from his bankruptcy to the date of termination of the policy.

Our Comments

7. This Office considered that even though the ORO staff had advised the complainant that his policy could not be terminated because the beneficiary was his wife, he was just trying to explain to the complainant the meaning of one of the provisions in the Married Persons Status Ordinance. Certainly, it would have been clearer if the staff had added that this was subject to clarification with the insurance company.

8. We noted that ORO had adopted proper follow-up measures in respect of the mistakes in record keeping and filing.

RATING AND VALUATION DEPARTMENT ("RVD")

Case No. OMB 2007/0354

Numbering of village houses – improperly allocating similar numbers to two village houses

The Complaint

The complainant lived in a unit within a village house in the New Territories. In 2002, RVD assigned "Flat B, G/F, No. 11" as his residential address. However, the complainant later found that mail items were often misdelivered to another house nearby with a similar address (No. 11B), causing much inconvenience to him and his family.

Rules on Numbering of Buildings

2. The Commissioner of Rating and Valuation is authorised by law to number any building which fronts or abuts on any street. As regards villages in the New Territories, RVD will automatically allocate a number to any new building that has been issued a Certificate of Compliance by the Lands Department, with reference to the information from that department on the name of the place. For existing rural properties, a formal building number will be allocated upon application.

3. In allocating a number to a building, RVD has to take into account the layout of the buildings in the neighbourhood and their existing numbers, so that the numbers would run consecutively. Moreover, numbers have to be reserved for nearby sites, so that building numbers follow a logical sequence.

4. In 1997, RVD first allocated "No. 11" to the village house containing the complainant's unit. The owner of the house subsequently filed a "Requisition for Particulars of Tenements" indicating that the ground floor had been divided into units A and B, the latter being the complainant's residence. RVD, therefore, assigned "Flat B, G/F, No. 11" to unit B in 2002.

5. In fact, the complainant's wife had also complained to the Post Office ("PO") about mail confusion. In September 2006, a joint site inspection by PO and RVD confirmed the complainant's address to be correct. However, "11B" was not an official number allocated by RVD. The Department, therefore, contacted the owner of "11B", but the latter did not apply for an official house number as advised.

6. PO had since taken steps to improve its mail delivery service to the complainant.

Our Observations and Comments

7. RVD was properly following its established policy and guidelines in allocating "Flat B, G/F, No. 11" to the complainant's residence.

8. However, it is not mandatory for village houses to have an official house number. As a result, RVD could only negotiate with those using an unofficial house number (the owner of "No. 11B" in this case) to rectify the situation. There are clearly deficiencies in the policy and guidelines concerned.

9. We were pleased that RVD had subsequently allocated a suitable official number to replace "No. 11B" thus resolving matters. Meanwhile, RVD would monitor the numbering of buildings in rural areas for improvement.

A case of deficient policy and guidelines

Annex 15

Summaries of Selected Cases Concluded by Preliminary Inquiries

TRANSPORT DEPARTMENT ("TD")

Case No. OMB 2007/4698

Air quality and noise control – inadequate control over air and noise pollution caused by public buses at a terminus

The Complaint

The complainant alleged that the patronage of a certain bus route on weekends and public holidays during the non-swimming season was only 20% to 30% of that in the swimming season. However, the bus company maintained the frequency of the service, thus causing air and noise pollution.

2. He had complained to TD several times. However, the Department kept replying that the frequency was necessary to meet public demand, without providing data in support.

3. He also complained that the bus drivers did not switch off their engines. He criticised TD for not closely monitoring the bus company's observance of the Guideline on Switching off Idling Engines ("Guideline").

Bus Frequency Appropriate

4. This Office noted that TD staff had conducted site inspection and investigation and confirmed that the number of passengers during the swimming and non-swimming seasons were similar. It had also consulted the District Council, which supported maintaining the frequency of the service.

Improvement Measures

5. TD had urged the bus company to remind the drivers to avoid buses waiting at the terminus for too long and to follow the Guideline.

6. This Office suggested that TD also request the Environmental Protection Department to help monitor the air quality and noise level in the vicinity of the terminus against the statutory limits. Should the limits be found to be exceeded, TD should consider remedial action such as relocating the terminus.

A case of need for closer monitoring

Annex 15
Summaries of Selected Cases Concluded by Preliminary Inquiries

VOCATIONAL TRAINING COUNCIL ("VTC")

Case No. OMB 2007/1336

Parking space application – confusing procedures in processing applications and poor staff attitude

The Complaint

The complainant alleged that there was confusion when the Evening Studies Unit of an Institute under VTC processed his application for an evening parking space. Moreover, the staff handling his application was impolite to him.

Applications Considered on Individual Merits

2. As a matter of principle, evening parking spaces were normally available for academic and administrative staff only. However, students who were physically handicapped or had special needs and had to drive to the Institute could also apply for such parking facilities. Applications would be considered on their individual merits. The Unit, therefore, did not issue any notice to invite students to apply.

No Set Deadline

3. Originally, the Unit had not set any deadline for application. However, in view of the large number of applications, the Unit supervisor verbally instructed his staff to stop receiving applications in order to clear the backlog as quickly as possible.

4. When the complainant later submitted his application, the staff told him that application was closed. He insisted on handing in his application and the staff finally accepted it. VTC emphasised that his application had been processed within a reasonable time frame and was rejected because he was ineligible.

No Clear Guidelines

5. This Office noted that the Institute had never informed students formally, say by notices, the circumstances for applications for parking spaces to be entertained. Nor had they set out the dates and deadlines for application. They had simply closed application arbitrarily. That was unfair to the students, who were not informed. Disputes would, therefore, be unavoidable.

6. In this incident, the Institute accepted the complainant's application even after the deadline. That was also unfair to those who had not insisted on submitting their application. From an administrative angle, there were multiple aspects of impropriety on the part of the Institute.

7. As regards the complainant's allegation about the poor manners of the staff, the staff concerned had denied this. In the absence of independent evidence, this Office would not comment. Nevertheless, the staff and the Institute had already apologised to the complainant.

Proper Fee-paying Parking Facilities Suggested

8. We considered that adult students should generally be responsible for their own transport arrangements. The Institute was not obliged to provide free parking for students except for those physically handicapped. However, public resources would not be properly utilised if the parking spaces in the Institute were left vacant.

9. This Office, therefore, suggested that VTC should consider providing the evening parking spaces on a fee-charging basis or outsourcing them to a carpark management agent so that evening students might make use of them at their own expense.

10. The Unit subsequently issued an administrative circular announcing that some of the parking spaces would be available to evening students on a monthly fee basis.

A case of lack of proper procedures

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2006/4255

Replacement of water meters – (a) giving contradictory information as to whether the old meter at the complainants' flat had been retained; and (b) removing the new meter without prior notice and failing to inspect the inside service of the unit

The Complaint

The complainants noted that their water charges had dropped drastically after replacement of the old water meter at their flat by WSD. Suspecting that the old meter removed had been inaccurate, they telephoned the Department for an examination of that meter. The hotline staff at first indicated that the old meter was still with WSD, but told them later that it had been disposed of and thus not available for checking. Moreover, WSD staff allegedly removed the new water meter without notice, and had failed to check the inside service as promised.

Misinformation

2. Around 270,000 old water meters were removed and replaced by WSD each year. It was not feasible to retain them for checking later as they would require a lot of storage space and manpower. Consequently, all old meters removed would be disposed of as garbage.

3. The Department admitted that its hotline staff had misinformed the complainants that the old meter had been retained. It had reminded staff that all old meters replaced after long use would be disposed of immediately.

Inaccurate Meter Reading and Clerical Error

4. The complainants' daughter had called WSD and raised doubts about their water charges. The staff replied that they could only remove the new meter for tests. However, the notification issued by the Department mentioned that its staff would visit the flat to replace the water meter and inspect the inside service. WSD explained that it was a clerical error for the notification to mention about inspection of the inside service. On the other hand, its staff did try to contact the complainants before removing the new meter. As nobody answered the door, the staff left a note informing the complainants that the water meter had been replaced.

5. WSD had looked up the water consumption records as well as past meter readings of the complainants' flat and confirmed that the new meter was working properly. The drastic reduction in water charges was probably due to a misreading by the meter reader. Subsequently, WSD adjusted the water charges and apologised to the complainants.

Tip of Iceberg?

6. It was incredible that WSD could have made so many mistakes in handling this case. This Office was worried that it might just be the tip of an iceberg. The Ombudsman urged WSD to step up staff training and minimise any chance of errors.

7. WSD had accepted these suggestions and enhanced its staff training programmes.

A case of negligence

WATER SUPPLIES DEPARTMENT ("WSD")

Case No. OMB 2007/3321

Escape route – unreasonably denying the complainant and other villagers the use of stairs at a slope

Promise Broken

WSD had promised some villagers use of newly constructed stairs at a slope after completion of the slope upgrading works. The stairs replaced an old track leading to the catchwater road on the crest and was the only escape route for villagers in case of fire. However, WSD later locked the gates to the stairs and stopped public use.

Land Authority's Requirement

2. The stairs were built between two slopes managed by the local District Lands Office ("DLO"). WSD was the maintenance agent of these two slopes and was responsible for the slope upgrading works. It had been WSD's intention to allow villagers to use the stairs for access to the catchwater road.

3. However, DLO considered the stairs to have been built for slope maintenance and should not be open to the public. WSD, therefore, locked up the gates before handing over the site to DLO.

4. DLO subsequently agreed to open the stairs for public use as and when it was upgraded by WSD to specified standard.

Our Observations

5. WSD should have consulted DLO before making a commitment to the villagers. If so, it would have known DLO's requirements of the standards for the stairs and incorporated them into the slope upgrading works. Moreover, the misunderstanding, inconvenience and additional expenses incurred could have been avoided.

6. In this connection, we suggested that WSD should note for future reference and, in similar cases, consult with other departments concerned before making any public commitment.

A case of lack of consultation

Annex 16

Summaries of Selected Cases Concluded by Mediation

HOME AFFAIRS DEPARTMENT ("HAD")

Case No. OMB 2007/2796

Estate beneficiaries support services – poor manners and failure to give proper advice

The Complaint

Allegedly, when the complainant applied to inherit his late mother's estate at the Estate Beneficiaries Support Unit under HAD, the staff was impolite and did not give him proper advice.

Mediation Process

2. This Office proposed resolving the issue by mediation and both parties agreed.

3. At the mediation meeting, the complainant recounted the incident. HAD representatives explained the procedures for processing applications and the difficulties encountered. It had been necessary for the staff to ask the complainant repeatedly in order to safeguard his late mother's estate as well as his rights. The staff was not reluctant to help. The representatives apologised to the complainant for any inconvenience caused.

4. The complainant observed that his application had in fact been approved by HAD and the staff concerned had already apologised to him.

Agreement Reached

5. After a candid exchange of views, HAD agreed to improve its estate beneficiaries support services, taking into account the complainant's suggestions. The complainant accepted the representatives' explanation and the matter was satisfactorily resolved.

Annex 17

Index of Cases Concluded by Full Investigation

Architectural Services Department		
2007/2277	Unreasonably approving stilt structures to be exempted from the calculation of building height restriction	Unsubstantiated
Buildings Department		
2007/2278	Unreasonably approving stilt structures to be exempted from the calculation of building height restriction	Unsubstantiated
Correctional Services Department		
2007/0138	Unreasonably refusing an inmate's request for meals to suit his national diet	Partially substantiated
Department of Health		
2007/1285	(a) Unreasonably postponing the complainant's dental appointment repeatedly; and (b) Poor staff attitude	Partially substantiated
2007/2123	Abusing authority by intervening in the decision of the complainant's employer to extend his contract and unreasonably questioning his integrity	Unsubstantiated*
Electrical and Mechanical Services Department		
2006/3326	Failing to properly handle and follow up a complaint about damaged bollard lights at a street refuge	Unsubstantiated
Environmental Protection Department		
2006/4425	Refusing to accept an application by email for opening an exemption account for disposal of construction waste	Partially substantiated *
Food and Environmental Hygiene Department		
2006/3188	Failing to stop illegal discharge of waste water by the complainant's neighbour into a drainage channel next to her house	Partially substantiated *
Government Logistics Department		
2006/3849	(a) Failing to take proper steps to ascertain that a tender's product met all tender specifications and mandatory requirements in a tender exercise; and (b) Failing to answer the complainant's enquiries directly	Unsubstantiated

(Cases with * have recommendation(s) in the investigation reports.)

Annex 17

Index of Cases Concluded by Full Investigation

Government Secretariat – Economic Development and Labour Bureau		
2006/4302	Delay in processing a travel agent's licence application	Unsubstantiated
Government Secretariat – Chief Secretary for Administration's Office		
2006/1337	Failing to properly handle and follow up a complaint about damaged bollard lights at a street refuge	Partially substantiated
Government Secretariat – Environment, Transport and Work Bureau		
2007/1985(I)	Wrong rejecting the complainant's request for information on suicide-related incidents on MTR tracks	Substantiated *
Highway Department		
2006/3327	Failing to properly handle and follow up a complaint about damaged bollard lights at a street refuge	Substantiated *
Hong Kong Housing Authority		
2005/3974(A)	(a) Failing to return to the Lands Department a slope adjacent to an HOS estate and unreasonably shifting responsibility for maintenance to owners of the estate; and (b) Not informing purchasers of such maintenance responsibility in sales brochure	Partially substantiated *
Housing Department		
2006/1735	Delay in notifying the complainant of the policy on recovery of his public housing unit while he was in prison, thus making the rents he had paid undeserved	Substantiated other than alleged *
2006/2329	Delay in recovering a public housing unit and effecting transfer of tenancy to the complainant, who had custody of her daughter after divorce and wrongly allowing her ex-husband to stay in the unit	Substantiated *
2006/3350	Unreasonably cancelling the complainant's application for a single-person flat after he and his family members were granted special transfer to another public housing unit	Unsubstantiated *
2006/4378	Failing to give prior warning on levy of surcharge for overstaying in a public housing unit	Partially substantiated *
2007/0149	Unfairly charging higher rent for a storeroom in a public housing estate	Substantiated *

(Cases with * have recommendation(s) in the investigation reports.)

Annex 17
Index of Cases Concluded by Full Investigation

2007/1791	Allocating a flat with structural problem to the complainant and refusing to compensate him for his loss	Partially Substantiated *
2007/4206	(a) Unreasonably rejecting the complainant's application to add his step-father and sister to his public housing tenancy; and (b) Transferring the complainant's family members to a smaller flat, thereby ignoring their housing needs	Unsubstantiated
2007/4129	Failing to provide reasons for rejecting the complainant's application for public rental housing and refusing to give him the application number	Unsubstantiated
Labour Department		
2007/4378	Failing to verify whether an employer had taken out insurance policy for his employee when processing a work injury case	Substantiated *
Land Registry		
2007/0323	(a) Impropriety in the registration of a charge document against the complainant's property; and (b) Failing to revoke the registration of an instrument with incorrect contents	Unsubstantiated *
Lands Department		
2006/2074	Failing to stop illegal discharge of waste water by the complainant's neighbour into a drainage channel next to her house	Substantiated *
2006/3134	(a) Failing to take enforcement action against a breach of building height restriction; and (b) Impropriety in handling an enquiry about the height restriction of a building	Partially substantiated
2006/3715	Failing to take lease enforcement action, thus condoning illegal parking	Unsubstantiated
2006/4547	Failing to control illegal new graves on the hillside opposite the complainant's residence	Unsubstantiated
Planning Department		
2007/2279	Unreasonably approving stilt structures to be exempted from the calculation of building height restriction	Unsubstantiated

(Cases with * have recommendation(s) in the investigation reports.)

Annex 17

Index of Cases Concluded by Full Investigation

Post Office		
2006/3182	Installing a public posting box in a private housing estate such that it was not accessible to non-residents of the estate	Partially Substantiated *
Rating and Valuation Department		
2006/2795	Unreasonably allocating similar numbers to a building and a hotel on separate branches of a street	Partially Substantiated
Social Welfare Department		
2006/4314	(a) Improper handling of the complainant's application for Disability Allowance; and (b) Poor service attitude	Substantiated *
2007/1289	Inconsistency in processing renewal of Normal Disability Allowance	Partially Substantiated *
Television and Entertainment Licensing Authority		
2007/2900	Adopting double standards in handling complaints about indecent articles	Unsubstantiated *
Transport Department		
2006/3716	Failing to curb illegal parking	Substantiated *
Water Supplies Department		
2006/3328	Failing to properly handle and follow up a complaint about damaged bollard lights at a street refuge	Substantiated *
2007/4417	(a) Unreasonably refusing a request to adjust water charges; and (b) Delay in giving a substantive reply	Partially substantiated*

(Cases with * have recommendation(s) in the investigation reports.)

Summaries of Selected Cases Concluded by Full Investigation

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary)

EFFICIENCY UNIT ("EU"), HIGHWAYS DEPARTMENT ("Hy D"), WATER SUPPLIES DEPARTMENT ("WSD") AND ELECTRICAL AND MECHANICAL SERVICES DEPARTMENT ("E&MSD")

Case Nos. OMB 2006/1337; OMB 2006/3326-3328

EU – complaint handling – failing to handle and follow up properly a complaint about reinstatement of bollard lights at a street refuge – partially substantiated

Hy D and WSD – same – same – substantiated

E&MSD – same – same – unsubstantiated

The Complaint

The complainant discovered that a pair of bollard lights at a street refuge had been removed for some time and not reinstated, leaving two holes on the ground and posing a hazard to passers-by. He called the Integrated Call Centre ("ICC") under EU many times to complain but to no avail. Feeling aggrieved, he lodged a complaint with this Office against EU, Hy D, WSD and E&MSD for failing to handle and follow up his complaint properly.

Works Arrangements

2. A private development project needed to carry out improvement works at a road junction and that entailed the removal and subsequent reinstatement of the bollard lights at the refuge. Meanwhile, WSD also needed to lay water pipes at the road junction and the bollard lights had to be removed temporarily. As the works areas of WSD and the private development overlapped, WSD, the WSD contractor, the private development contractor and other departments responsible for road improvement held a meeting to discuss the works arrangements.

3. After discussion, WSD agreed to take up the responsibility to coordinate the reinstatement of the bollard lights, whilst the private development contractor undertook to build the cable duct and draw pit leading to the refuge. Nevertheless, due to poor coordination among the various parties, the bollard lights were never reinstated.

Complaint against Hy D

4. Hy D learned from the WSD contractor earlier that the water works at the said location had already been completed. However, since the cable duct and its ancillary works were not yet completed, Hy D could not direct its contractor to commence the power supply works. Nevertheless, we considered that Hy D should be responsible for monitoring the other organisations in completing the maintenance and repairs of road facilities within a reasonable time span. It should have taken the initiative to urge WSD to take follow-up action promptly to avoid further delay.

5. In addition, we noted that E&MSD had replied by email to ICC's referrals every time, with copies and telephone calls to Hy D for the latter to follow up. However, Hy D neither responded nor took any action. It would not follow up the case until ICC made a formal referral.

6. This Office considered that although Hy D had entrusted E&MSD with the responsibility for the daily inspection and maintenance of bollard lights, it was certainly improper for Hy D not to take follow-up action when E&MSD notify them of the situation.

7. In view of the above, the complaint against Hy D was substantiated.

Complaint against WSD

8. The WSD contractor repaved the road surface before the cable duct was built resulting in the Hy D contractor not being able to commence its power supply works at the site. We considered that WSD, being the coordinating department for all the works, could hardly escape the blame. This also showed WSD's failure to monitor the progress of its contractor effectively, resulting in the perpetuation of the problem.

9. Furthermore, when WSD learned about the problem, it did not liaise with the various contractors to take remedial measures. Nor did it liaise with Hy D on this matter. On the contrary, it set the problem aside such that the matter was further delayed for more than three years.

10. We considered that although the private development contractor was not hired by WSD, the Department should still have taken the initiative to contact the persons responsible for the private development to solve the problem. WSD should never have allowed the cable duct laying works to be delayed without any control.

11. Our investigation revealed deficiency in WSD's file maintenance system. The documentary records were incomplete and the relevant reference data lacking. Improvement was certainly required. Moreover, WSD obviously lacked an effective complaint management mechanism to monitor or follow up cases. As a result, complaints were not handled in a timely way.

12. In summary, WSD had failed to perform its coordinating role in monitoring and ensuring proper completion of the works. The complaint against WSD was, therefore, substantiated.

Complaint against E&MSD

13. E&MSD was generally responsible for the maintenance of bollard lights. Upon receipt of ICC's referral of the complaint, E&MSD had promptly conducted a site inspection and notified Hy D for follow-up action.

14. We considered that E&MSD had properly performed its duties to assist in solving the problem of reinstating the said bollard lights. The complaint against E&MSD was, therefore, unsubstantiated.

Complaint against EU

15. We understood that ICC staff did not actually work in the departments concerned. They could only give answers or make referrals according to the information supplied by those departments. However, ICC could have been more proactive and sought information from E&MSD when the latter repeatedly indicated that it had not received the relevant instructions. In this connection, ICC undertook to make improvement.

16. In fact, ICC had done its best to follow up the case initially and took the initiative to liaise with various departments for a solution. It even contacted WSD, which had not joined ICC's "one-stop" service. That was certainly commendable. However, when ICC received replies from the three departments and learned that the problem remained unsolved, it failed to follow up further such that the case was allowed to drag on for a long time.

17. This Office considered that the objective of ICC was to provide "one-stop" service to answer public enquiries and handle complaints, with a view to enhancing the efficiency of Government departments. However, the way ICC handled this case clearly showed that it had failed to achieve its intended objective.

18. It also showed that whenever there was a more complex complaint or that it involved the jurisdictions of several departments, ICC staff might not have sufficient data and background information to provide answers or make proper referrals. In this connection, this Office had initiated a direct investigation into the capability of ICC in handling complaints generally.

19. In view of the above, the complaint against EU was partially substantiated.

Recommendations

20. The Ombudsman made the following recommendations to Hy D and WSD:

Hy D

(a) set up an effective reminder system as a long-term measure to closely monitor responsible organisations in the complete reinstatement of road facilities within a reasonable time frame so as to ensure road safety;

(b) strengthen its cooperation with E&MSD in the general inspection and maintenance of bollard lights and improve their notification system;

WSD

(c) establish a sound complaint management mechanism for monitoring the progress of cases so as to effectively handle each and every complaint;

(d) improve its records management to maintain data and files properly. Should the coordination of works involve private organisations, the division of responsibilities and duties should be sorted out as early as possible to avoid any disputes; and

(e) adopt effective measures to better supervise the works of contractors to ensure that they performed their duties in accordance with contract terms and formulate specific procedures and guidelines for staff.

21. Recommendations to EU for systemic improvement would be made separately in our direct investigation report.

A case of delay and lack of coordination

HONG KONG HOUSING AUTHORITY ("HKHA")

Case No. OMB 2005/3974(A)

Slope management – (a) failing to return to the Lands Department a slope adjacent to a housing estate and unreasonably shifting responsibility for maintenance to owners of the estate – partially substantiated; and (b) not informing purchasers of such responsibility in sales brochure – substantiated

The Complaint

The Owners' Corporation ("OC") of a Home Ownership Scheme ("HOS") estate complained that HKHA had failed to return an adjacent slope on temporary lease from the Lands Department ("Lands D") and shifted the responsibility for maintenance to the owners. Furthermore, the sales brochure for Phase II of the estate did not set out such responsibility, which was unfair to the purchasers.

Background

2. The estate had been developed in two phases. A year or so after putting Phase I on sale, HKHA leased an adjacent slope from Lands D for use as a works area. The lease stated that the lessee shall be responsible for managing and maintaining that slope until further notice and that Lands D would resume the slope when necessary.

3. The Deed of Mutual Covenant ("DMC") prepared by HKHA came into effect when the first purchaser signed title deed of the estate. Phase II was put on sale about 18 months later and construction completed four months afterwards. However, Lands D refused to resume the slope despite HKHA's request.

4. Two years later, Lands D wrote to ask the owners of the estate to clear the refuse on the slope. The OC claimed total ignorance of such responsibility.

Comments from HKHA

Complaint Point (a)

5. Initially, HKHA assumed that the management and maintenance responsibility for the slope would be temporary, but included a provision in the DMC to ensure that the responsibility would be collectively borne by the owners after completion of the estate until resumption of the slope by Lands D. When Lands D refused to resume the slope, HKHA did not pursue the matter because Lands D was still studying long-term land use of the slope.

Complaint Point (b)

6. In the sales brochures of both Phases I and II, purchasers were reminded to refer to the land lease and the DMC. When they chose their flats, they were also shown an outline of the DMC which indicated that owners would be responsible for maintaining “all slopes” and all purchasers signed a declaration that they had understood their responsibility for managing and maintaining slopes. Moreover, solicitors had explained salient points of the DMC to the purchasers.

Our Views

Complaint Point (a)

7. Although it was common practice to place the slope maintenance responsibility through the land lease with the lessee (HKHA in this case) who could then transfer the responsibility to the future owners of the estate, the lease in question had no time limit. This meant HKHA or the owners might have to assume permanent maintenance responsibility for a slope originally leased for temporary use. This was not reasonable. However, HKHA had not discussed or negotiated with Lands D to protect its interests or those of the owners. This complaint point was, therefore, partially substantiated.

Complaint Point (b)

8. Purchasers seldom have ample opportunity or sufficient knowledge to understand all the details in the land lease and the DMC. They generally rely on the developer to provide key information and the solicitors to highlight and explain their responsibilities.

9. When Phase I was put on sale, the DMC of the estate was not yet operative. There was no way purchasers could know about the slope maintenance responsibility. When HKHA later decided to pass such responsibility to the future owners of the estate, it ought to have notified the purchasers as soon as possible, so that they could reconsider whether or not to proceed with the purchase.

10. Information from HKHA could not ascertain that the solicitors had drawn the purchasers' attention to the added responsibility for slope maintenance.

11. When Phase II was put on sale, the DMC was already in effect. Nonetheless, the information given by HKHA to purchasers had not clearly spelt out the responsibility for maintaining this peculiar slope. The sales brochure, while showing a plan with some slopes for the owners' maintenance, actually did not cover the slope in question.

12. This Office found it improper of HKHA not to have made full and timely disclosure of all information to purchasers with regard to this significant issue affecting their interests. HKHA did not follow the recommendation by the Law Reform Commission to notify purchasers clearly in sales brochures of any actual or potential responsibility for maintaining slopes. This complaint point was, therefore, substantiated.

13. As it was still possible that the slope would eventually be resumed by Lands D, a solution would be for HKHA to manage and maintain the slope directly until resumption.

Our Recommendations

14. The Ombudsman urged HKHA to:

(a) consider the solution above and negotiate with the OC for early implementation;

(b) avoid accepting unreasonable conditions when leasing land from Government in future; and

(c) review the practice for disclosing important information. Besides clearly informing purchasers of a special responsibility like this in sales brochures, HKHA should promptly and clearly remind purchasers of any additional terms so as to safeguard their interests.

A case of negligence and unfairness

HOUSING DEPARTMENT ("HD")

Case No. OMB 2006/2329

Public housing tenancy – failing to follow established policy to assign the tenancy of a public housing unit, upon divorce of a couple, to the party granted custody of their child – substantiated

The Complaint

Upon divorce from her husband, the complainant was granted custody of their daughter. However, HD did not follow its established policy to assign the tenancy of their public housing unit to her. Instead, her ex-husband was allowed to stay in the unit.

The Policy

2. Under the Policy on Housing Arrangements for Divorced Couples in Public Rental Housing Flats, tenants would not be entitled to additional housing on grounds of divorce. They would have to make their own housing arrangements. If, upon divorce, a couple could not agree which party to take up the tenancy of the existing public housing unit, HD would normally grant the tenancy to the party having the custody of their child. The other party would then be required to move out.

HD Explanation

3. In this case, HD did not follow the policy for the following reasons:

(a) the complainant had been staying elsewhere for some four years and was receiving Comprehensive Social Security Assistance from the Social Welfare Department ("SWD") with a rent allowance for private housing. She was, therefore, not in urgent need of accommodation;

(b) the complainant's ex-husband was suffering from depression after the divorce. To prevent mishaps, SWD had advised HD not to remove him from his existing accommodation;

(c) the complainant's housing request was being followed up by a voluntary agency. Should the agency recommend compassionate rehousing, HD would separately arrange public housing for her; and

(d) notwithstanding the established policy, HD guidelines stated that staff should pay attention to special cases and submit them to their supervisors for consideration where necessary.

Our Observations and Comments

4. Taking account of her ex-husband's mental condition and SWD's advice, we did not dispute HD's decision of not requiring him to move out immediately. However, under the policy, the complainant was entitled to public housing. HD should not have made her wait and separately apply for compassionate rehousing. If HD had difficulty in allocating the existing unit to her, it could simply have offered her another unit.

5. Meanwhile, in view of her ex-husband's condition, HD could have arranged for compassionate "rehousing" (in the existing unit) for him.

Conclusion and Recommendation

6. As HD had deprived the complainant of her entitlement under its established policy, the complaint was substantiated.

7. The Ombudsman recommended that HD review its guidelines to ensure proper implementation of the policy.

A case of wrong decision and failure to follow procedures

Annex 18

Summaries of Selected Cases Concluded by Full Investigation

HOUSING DEPARTMENT ("HD")

Case No. OMB 2006/4378

Surcharge for overstaying – failing to give prior warning on levy of surcharge for overstaying in a public housing unit – partially substantiated

The Complaint

The complainant, a public housing tenant, had applied to HD's property management office for a Certificate of Eligibility for Purchase of a Home Ownership Scheme ("HOS") flat and later bought an HOS flat from the secondary market.

2. Five months later, HD informed her that she should have vacated her public housing unit within 60 days after purchasing her HOS flat. For overstaying in the unit, she was required to pay triple rent according to the policy. The complainant considered this unfair as she had never been informed of such policy.

HD Explanation

3. The HOS purchase application form that the complainant had signed contained a statement that she would surrender her public housing unit within 60 days after completion of the assignment of the HOS flat. The complainant purchased an HOS flat but did not surrender her public housing unit. HD's tenancy management office later discovered her overstaying in the unit for three months. For the period overstayed, she had to pay a Use and Occupation Fee equivalent to three times the normal rent, plus rates. This is to avoid double subsidy to public housing tenants who own HOS flats.

4. As the requirement to surrender public housing units was stated in the HOS purchase application form, HD did not inform the complainant separately of the requirement for triple rent.

Our Comments

5. We acknowledged that the complainant had the obligation to surrender her public housing unit, as stipulated in the HOS purchase application form. We also agreed that HD should charge a higher rent in cases of overstaying to avoid double subsidy.

6. However, the policy of charging triple rent was not mentioned at all in the HOS purchase application form. We considered HD to have a duty to give tenants fair and clear warning of the consequences of overstaying, both at the time of HOS purchase application and close to the expiry of the 60-day limit.

7. Moreover, we questioned the lack of coordination or communication between the property management office and tenancy management office, both under HD. It was surprising that the latter office had not noticed the complainant's overstaying until after three months.

Conclusion and Recommendations

8. On balance, this complaint was partially substantiated.

9. The Ombudsman recommended that HD:

(a) incorporate the requirement for triple rent into the HOS purchase application form to inform tenants and also instruct staff to remind them;

(b) improve the coordination and communication between its property management office and tenancy management office of its estates; and

(c) make it a standard practice, towards the expiry of the 60-day limit, to issue a reminder to tenants concerned to surrender their units and to warn them of the consequences of non-compliance.

A case of lack of transparency and internal coordination

HOUSING DEPARTMENT ("HD")

Case No. OMB 2007/0149

Storeroom rent – unfairly charging higher rent for a storeroom in a public housing estate – substantiated

The Complaint

In 2005, the complainant rented from HD storeroom A in a public housing estate at $2,000 per month. Later, she discovered that the adjacent storeroom B of the same size had been leased out at only $330 per month. She asked HD to adjust the rent for storeroom A based on the 2006 valuation of $770 by the Rating and Valuation Department ("RVD"), but was refused.

Market Rent *vs* Uniform Rent

2. HD explained that storerooms in public housing estates were leased out at either market rent or uniform rent.

3. It charged market rent for those at a better location and of high commercial value. It normally reviews their rent every three years and tenants could renew their lease at the re-assessed market rent.

4. For those storerooms less conveniently located and of low commercial value, uniform rent would be charged just to cover HD's management cost. It was also subject to review every three years. Lease renewal was automatic.

5. Storerooms A and B were located on the podium level. The complainant rented storeroom A through open application and was charged market rent. Storeroom B, on the other hand, had been leased out at uniform rent for more than ten years.

6. HD indicated that it adopted different criteria for determining market rent from those used by RVD to assess the rateable value of property. Hence, it refused the complainant's request for rent adjustment based on RVD valuation.

Our Observations and Conclusion

7. In principle, it was reasonable of HD to have a policy of charging rent differently based on the circumstances to avoid idling of premises. However, the commercial value of a storeroom would change from time to time. HD should have reviewed its arrangements regularly to avoid such unfairness as that between storerooms A and B in this case. There were deficiencies in HD's implementation of its policy.

8. The Ombudsman, therefore, considered this complaint substantiated.

Policy Review

9. HD has since initiated a policy review, with a view to re-assessing rent upon expiry of each lease and charging market rent, where considered appropriate, upon lease renewal.

A case of unfairness and faulty procedures

HOUSING DEPARTMENT ("HD")

Case No. OMB 2007/1791

Public housing allocation – allocating a defective unit to an applicant and refusing to compensate him for his loss – partially substantiated

The Complaint

Having lived in a public housing unit for barely a year, the complainant was asked by HD to move temporarily, for repairs to the floor slab of the unit. He later learned that some other tenants in the building had already been asked to move for a similar reason.

2. The complainant held that as the floor slabs in the building were generally defective, HD should not have allocated the unit to him. He further claimed that he had spent some $40,000 on renovating the unit and so demanded compensation. However, HD refused.

HD's Explanation

3. In accordance with policy, HD had refurbished the unit before allocating it to the complainant. HD's maintenance contractor had inspected the ceiling of the unit below and not found any seepage or spalling.

4. However, spalling was found there a few months later, with serious corrosion of the reinforcing steel. The floor slab in his unit needed repairs. The complainant, therefore, had to move to another unit temporarily.

Relocation Arrangements

5. HD offered to waive the rents for both the unit and his temporary accommodation.

6. Alternatively, the complainant could move to another unit within the estate permanently, with a rent-free period and removal allowance. HD would also "decorate" the unit and provide removal service.

Our Observations and Comments

7. This Office noticed that there had been a total of 13 cases of ceiling spalling involving 26 units in the building within the three preceding years, in which the floor slabs between the upper and lower units had to be recast. We considered that HD should have taken this as an indication of a need for a thorough check of the entire building and not allocated that unit to the complainant.

8. HD had made the complainant move out of his unit soon after moving in, resulting in his loss in renovation costs. The Department should, therefore, provide due remedy by restoring the complainant to his former position, before occurrence of the problem.

9. HD's alternative offer in para. 6 above basically served this purpose. However, the Department should have made that offer at the outset, instead of acting on this Office's inquiry.

Conclusion

10. Whilst it was difficult for us to ascertain whether HD had knowingly allocated a defective unit to the complainant, there had indeed been impropriety in its handling of the case.

11. The Ombudsman, therefore, considered this complaint partially substantiated.

Recommendation

12. We recommended that HD negotiate details with the complainant as soon as possible, to grant him reasonable compensation and minimise any inconvenience arising from his removal.

A case of lack of initiative and consideration

LABOUR DEPARTMENT ("LD")

Case No. OMB 2007/4378

Employees' compensation insurance – failing to verify whether employer had taken out insurance policy for employee when processing work injury case – substantiated

The Case

In 2002, the complainant was hit by a tram on his way to deposit a cheque for his employer. The employer reported the case to LD but denied responsibility, claiming that the complainant was on leave at the time of the accident.

2. The employer provided an insurance cover note to LD. It showed the policy to take effect from the day of the accident. LD staff accepted the policy as valid without further verification.

3. In fact, the policy was taken out after the accident. The complainant came to know about this when he and the tram company had taken the case to court in 2007. The complainant complained to LD, which subsequently prosecuted the employer for failing to obtain compulsory insurance for its employees. The employer was finally convicted by the court of the offence charged.

LD's Maladministration

4. LD is the authority for enforcement of the Employees' Compensation Ordinance. Its staff ought to be well aware of employers' obligation to obtain compulsory insurance for employees and, in handling cases of injury at work, the need to ensure the insurance coverage for the entire period of employment.

5. The staff concerned should not have accepted the cover note and closed the file without checking the insurance policy. Had he checked, he would have found that the policy was purchased after the accident and therefore did not cover the period of employment before and at the time of the accident.

6. Against this background, The Ombudsman considered the complaint substantiated.

Recommendation

7. The Ombudsman suggested LD review its procedures and provide training for staff to ensure they check insurance policies properly.

8. LD accepted our recommendations and adopted improvement measures.

A case of negligence

LANDS DEPARTMENT ("Lands D") AND TRANSPORT DEPARTMENT ("TD")

Case Nos. OMB 2006/3715-3716

Lands D – lease enforcement – failing to take lease enforcement action, thus condoning illegal parking – unsubstantiated

TD – traffic management – failing to curb illegal parking – substantiated

The Complaint

The complainant had repeatedly complained to Lands D and TD about frequent illegal parking of vehicles at the garden of a building and on the adjoining pavement, but to no avail. She alleged that Lands D had failed to take lease enforcement action on such unauthorised use of the building site while TD had failed to curb illegal parking on the pavement, thereby affecting pedestrian safety.

Proper Action by Lands D

2. There is in fact no lease or planning restriction on parking of vehicles at the garden. However, as the adjoining pavement is Government land, occupation of the pavement by vehicles is against the law. Lands D had thus painted demarcation lines to facilitate Police prosecution of illegal parking on the pavement. The Department had also referred the illegal parking problem to TD and the Police for action.

3. Lands D had no authority to stop vehicles from parking at the garden, but had duly assisted in dealing with illegal parking on the pavement.

4. The complaint against Lands D was, therefore, unsubstantiated.

Delay by TD

5. TD had agreed to install railing to prevent vehicles from entering the pavement. However, soon after commencement of the works, TD received a letter from the owner of the garden claiming right of way of the pavement for vehicular access to the garden. TD thus removed the railing.

6. Having reviewed the matter, TD concluded that as only two cars could be parked at the garden and pedestrian traffic along the pavement was low, occasional occupation of the pavement by the cars was not a serious problem and could be handled by law enforcement action.

7. To cope with illegal parking by other vehicles on the pavement, the local District Council proposed the installation of railing along an adjacent section of the pavement. After consulting residents through the Home Affairs Department, TD started the works.

8. This Office noted that while it was necessary for TD to handle the matter prudently, it had taken over 20 months from the commencement of the previous works to that of the latest. That was far too long and had affected pedestrian safety in the interim. We considered TD to have been indecisive and had procrastinated over this issue.

9. In this light, the complaint against TD was substantiated.

Recommendations

10. The Ombudsman urged TD to:

(a) closely monitor the installation of the railing to avoid further delay; and

(b) continue to monitor the traffic condition of the neighbourhood and, where necessary, request the Police to step up enforcement action.

A case of delay

POST OFFICE ("PO")

Case No. OMB 2006/3182

Private posting boxes – installing a public posting box in a private estate rendering it not accessible to non-residents – partially substantiated

The Complaint

The complainant alleged that PO had installed a public posting box in a private estate near his residence instead of installing it on the street outside the estate, rendering it inaccessible to non-residents of the estate and people in the neighbourhood.

Annex 18

Summaries of Selected Cases Concluded by Full Investigation

Installation of Private Posting Boxes

2. Property owners or management companies of private housing estates or lots may apply for installation of "private posting boxes" but have to bear the cost of their purchase, installation and maintenance. Prior approval must be obtained from PO before the boxes could be installed at the specific locations.

3. PO had received a letter from the management office of a private housing estate requesting installation of a posting box in its vicinity. PO staff inspected the postal facilities in the area. Since it took only six to eight minutes to walk from the estate to the nearest posting box, PO considered it unnecessary to install another one there. However, as the management office undertook to meet all the costs required, PO installed a "private posting box" in the estate for the exclusive use of its residents. Meanwhile, PO could save its expenditure on postal facilities.

Staff Negligence

4. The PO conditions for installation of "private posting boxes" required an applicant to affix a notice that it was private. However, due to PO staff negligence, the estate management office was not required to do so before collection services were provided. This caused the complainant to mistake it to be for public use. To avoid recurrence of such misunderstanding, PO subsequently arranged to affix the notice.

5. Moreover, PO had failed to record in its files the justification for approving the installation of an additional posting box in the estate. Such documentation was essential and omission inappropriate.

Impropriety in Charging

6. Our investigation found that PO did not charge at all for collection from any of the "private posting boxes" in Hong Kong. Initially when there were just a few such boxes, providing the collection services did not involve much extra finances.

7. Nevertheless, the cost of purchase and installation was only a one-off capital expenditure, while maintenance would only be a small fraction of the total expenditure. In installing "private posting boxes", PO should have focused on the cost of collection services as recurrent operating expenditure borne solely by PO.

8. This Office noted that PO had considered there simply to be no need for an additional public posting box in the vicinity of the estate. The "private" posting box was provided in the estate only because the management office asked for it. In this context, although the recurrent expenditure might not have been a burden on PO, these boxes were undeniably an extra service for the convenience of the estate residents. If PO did not charge anything for the collection service, it would be tantamount to using public funds to subsidise the additional expenditure thus incurred. It was a deviation from the "user pays" principle and people would deem that as unfair.

Conclusion and Recommendations

9. PO had approved the installation of the posting box in accordance with the relevant guidelines and considerations. There was no impropriety in processing the application except for the recording and filing procedures which needed improvement. However, PO had failed to charge for the collection services for the "private posting box" for the exclusive use of the estate. PO lacked thorough planning and long-term consideration. Nor did it ensure the proper use of public funds.

10. Against this background, The Ombudsman considered this case partially substantiated.

11. PO accepted our recommendations to:

(a) clearly record the key issues and justification for decisions made when processing each and every application and ensure proper maintenance of file records so as to assess more accurately the feasibility of any addition or relocation of posting boxes; and

(b) expedite the formulation of improvement measures and implementation schedule for collection services and charges for "private posting boxes" and review their effectiveness from time to time to ensure proper use of public funds.

A case of negligence and omission

RATING AND VALUATION DEPARTMENT ("RVD")

Case No. OMB 2006/2795

Numbering of buildings – unreasonably allocating similar numbers to a building and a hotel on separate branches of a street – partially substantiated

The Complaint

The complaint was from the owners' committee of a building (the "Building") at No. 8 of a Y-shaped street. RVD had allocated a similar number (8A) to a new hotel, though it was on another branch of the street.

2. The complainant raised objection on the following grounds:

(a) the number allocated to the hotel did not correspond to its location on the street;

(b) the similarity in the numbers of the Building and the hotel had confused visitors;

(c) the hotel should have been allocated the original numbers (6B - 6E) of the building previously on its site; and

(d) RVD had not consulted the owners of the Building for other options.

RVD Comments

3. RVD explained that when a site was redeveloped, the number would be cancelled with the demolition of the building and a new number allocated to the new building. Notwithstanding the complainant's viewpoints, the Department had to consider the hotel owner's preference and such factors as the numbering pattern of neighbouring buildings, the physical layout of the new hotel and the numbers available for allocation.

Remedial Measures

4. RVD had asked the hotel owner if he would accept another building number. This was rejected because the hotel had prepared both local and overseas promotional materials bearing the number 8A.

5. RVD also met with a representative of the owners of the Building to explore ways to alleviate the owners' concern. However, the complainant was not satisfied.

6. RVD updated its guidelines soon afterwards, requiring staff to refrain from allocating a building number that might cause confusion and to advise property owners against requests for any such numbers. If a property owner insists on such a request, consideration should be given to consulting owners of adjacent buildings likely to be affected.

7. To help members of the public to locate the buildings on the street in question, RVD also asked the Highways Department to alter the street signs at different sections of the street so as to display the respective building numbers.

Our Observations and Comments

8. This Office noted that the numbering pattern of the buildings along the street was irregular. It could indeed confuse the public to have No. 8 and No. 8A on the two different branches of the street.

9. Although RVD's allocation of No. 8A to the hotel was partly consistent with the then prevailing departmental guidelines, the Department had not fully taken into account other factors such as the numbering pattern of the street, which already had the number 8 on its other branch.

10. Nevertheless, RVD's updating of its guidelines was a major improvement to meet community expectations for transparency and consultation. The new street signs put up along the street in question should also help visitors, including postmen, in locating the buildings.

Conclusion

11. On balance, this complaint was partially substantiated.

A case of inadequate deliberation and lack of consultation

Annex 18
Summaries of Selected Cases Concluded by Full Investigation

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2006/4314

Disability allowance – (a) improper handling of application; and (b) poor service attitude – substantiated

The Complaint

In April 2006, the complainant, suffering from severe arthritis, applied for Disability Allowance ("DA"), which required medical assessment by a public hospital. Mr A of SWD Social Security Field Unit told her to take the Medical Assessment Form to the medical social worker at the Queen Elizabeth Hospital ("QEH"). However, the latter advised that the Field Unit should have sent the Form to QEH direct. The complainant then returned the Form to Mr A.

2. In July, when the complainant twice asked Mr A for progress with her case, he was ill-mannered and unhelpful. After her repeated requests, he called the hospital to learn that her application had not been processed as the doctor had forgotten to fill in the Form.

3. In early August, SWD approved the application and advised the complainant to contact Mr B of the Field Unit in September to apply for renewal. She met and telephoned Mr B in September and November but he was also very unfriendly, giving her the cold shoulder when she greeted him and being impatient when she made enquiries.

4. The complainant considered that both Messrs A and B had not followed up her application properly and their service attitude was poor.

Comments from SWD

5. DA applicants should normally hand the Medical Assessment Form to the medical social worker or doctor at the hospital. However, QEH was a unique case in that the Field Unit should send the Form to the hospital direct. SWD admitted that Mr A had been mistaken in telling the complainant to hand in the Form herself. Nevertheless, he had subsequently apologised and mailed the Form to the hospital. He had also enquired about the progress of her case several times on request and confirmed in early August her eligibility for DA.

6. Mr A said that there might have been some misunderstanding as he had never refused to help the complainant, nor had he been impolite. However, he agreed that he should be partly responsible for the complainant's unpleasant experience.

7. Mr B claimed that he had mailed the Form to QEH. When the doctor completed the assessment in late December, he had even asked the hospital to fax him the report for follow-up. He completed processing the case in January 2007 and disbursed the DA to the complainant.

8. Mr B said that his manner of speech had always been "blunt" and the complainant might have misunderstood him. He also admitted partial responsibility for the incident and apologised.

Our Observations and Conclusion

9. Handling DA applications is a daily routine for the Field Unit and yet Mr A made the mistake on the procedures, thus causing the complainant unnecessary shuttling between the Field Unit and the hospital. Both Messrs A and B asked for progress of her case only on request. Such service attitude was unbecoming of a Government department committed to serving the disadvantaged.

10. Judging from the complainant's vivid account and the admission of partial responsibility by both Messrs A and B, we have to conclude that even if there had been misunderstanding, their manners were unsatisfactory.

11. This complaint was, therefore, substantiated.

Recommendations

12. To avoid recurrence, The Ombudsman recommended that SWD:

(a) explore with the Hospital Authority the possibility of standardising the procedures among all public hospitals;

(b) in the interim, revise its departmental guidelines to highlight to staff the unique arrangements with QEH;

(c) instruct staff to be always proactive, polite and caring when dealing with clients; and

(d) enhance its monitoring of DA cases and enter important dates into its computer system for timely follow-up by staff.

A case of error and poor service attitude

Annex 18

Summaries of Selected Cases Concluded by Full Investigation

SOCIAL WELFARE DEPARTMENT ("SWD")

Case No. OMB 2007/1289

Disability allowance – inconsistency in processing renewal of Normal Disability Allowance – partially substantiated

The Complaint

The complainant had lost four left-hand fingers, for which SWD granted Normal Disability Allowance ("NDA") for over ten years. However, it suddenly notified her that the allowance would not be renewed. She could not understand the reason for such inconsistency.

Criteria for Normal Disability Allowance

2. One of the criteria for NDA was that the applicant had to be certified by the Department of Health ("DH") or the Hospital Authority ("HA") as severely disabled for not less than six months (i.e. broadly equivalent to 100% loss of earning capacity such as loss of all ten fingers).

Wrong Assessments in the Past

3. On this consideration, this Office observed that in the previous years, the HA doctors concerned had wrongly assessed the complainant's condition to qualify her for NDA and SWD staff had each time indiscriminately approved her applications.

4. However, SWD staff found some contradictions in her latest medical assessment report and sought clarification from the doctor. The latter subsequently corrected his report and indicated that the complainant did not qualify for NDA.

5. SWD then notified the complainant that she would no longer be granted NDA. As she did not appeal, the case was closed.

6. It was clear that SWD had acted responsibly and reasonably in querying the doctor's assessment on the latest application and in discontinuing the NDA for the complainant. However, her previous applications had not been subject to the same good practice. In the past, SWD staff had simply rubber-stamped all the doctors' recommendations. This accounted for the inconsistency.

7. As the approving authority for NDA, SWD has the responsibility to safeguard proper use of public funds. In making its decision, the Department should not rely solely upon the doctor's assessment and recommendation without its own analysis.

Need for Improvements

8. SWD acknowledged the need to enhance its staff's ability to identify doubtful points in medical assessments and agreed that training in this area should be strengthened.

9. SWD also agreed with HA and DH to prepare a checklist for assessment of disabilities for doctors' reference.

Our Conclusion and Recommendations

10. The Ombudsman considered this complaint partially substantiated.

11. She urged SWD to:

(a) draw up the necessary training programme with urgency;

(b) revise its guidelines for all staff to examine medical assessment reports carefully and seek clarification from the doctor whenever in doubt; and

(c) require staff to study applicants' previous medical assessment reports when processing their applications for renewal of NDA and copy such reports to their assessing doctors for reference.

A case of lack of prudence and dutifulness

TELEVISION AND ENTERTAINMENT LICENSING AUTHORITY ("T & ELA")

Case No. OMB 2007/2900

Complaints about indecent articles – adopting double standards in handling complaints – unsubstantiated

The Complaint

In May 2007, T & ELA received a complaint alleging indecent elements in the Bible. T & ELA concluded that the complaint was not substantiated and submission of the Bible to the Obscene Articles Tribunal ("OAT") for classification was unjustified. The complainant then complained to this Office that T & ELA's refusal to submit the Bible to OAT was unreasonable and that it had adopted double standards compared with its previous handling of a complaint about the *Chinese University Student Press* ("Student Press").

T & ELA's Comments

2. Under the Control of Obscene and Indecent Articles Ordinance, T & ELA may submit to OAT for classification any article suspected to contain obscene or indecent elements.

3. Upon receipt of a public complaint, T & ELA would examine the contents of the article. It would refer to the Guidance to Tribunal laid down in the Ordinance and OAT's previous classification results as well as court decisions in appeal cases, when considering whether the article should be submitted to OAT. T & ELA's criteria were similar to OAT's and in line with the standards of morality, decency and propriety generally accepted by the community. Personal preference of staff members would not be involved, nor would the background of complainants and the number of similar complaints affect T & ELA's judgement.

4. T & ELA stated that it had followed the same procedures and criteria in handling both complaints.

Our Observations

5. Under the Ordinance, T & ELA may submit articles to OAT for classification. In other words, it has the authority to submit, or not.

6. In this case, T & ELA had examined the complaint in accordance with its procedures and, exercising the above authority, decided not to submit the Bible to OAT for classification.

7. Given that OAT is under the Judiciary, which is outside The Ombudsman's jurisdiction, and the dispute over its classification of the Student Press was under judicial review, we could not comment on how T & ELA had handled the Student Press case. Nevertheless, we found T & ELA's explanation regarding its handling of the Bible case consistent with its established criteria and procedures. There was nothing unreasonable or contradictory.

Conclusion and Recommendation

8. The Ombudsman, therefore, considered this complaint unsubstantiated.

9. However, T & ELA's complaint handling procedures, level of staff and overall assessment system had room for improvement. Hence, we recommended a comprehensive review.

Annex 19

Summaries of Selected Cases on Code on Access to Information

(Where applicable, the specific aspect of maladministration established is highlighted for clearer focus at the end of the case summary.)

ENVIRONMENT, TRANSPORT AND WORKS BUREAU ("ETWB")

Case No. OMB 2007/1985(I)

Access to information – wrongly rejecting a request for data – substantiated

Request for Data on Railway Suicide

In June 2006, the complainant, a university researcher, requested the then ETWB to provide information on incidents of suicide and suspected suicide along the Mass Transit Railway ("MTR") trackside between 1997 and 2006. Details sought included date, time and location of the incident; age and gender of the person involved; severity of the incident (i.e. no injury, serious or fatal); and duration of train service disruption.

2. In July, ETWB simply referred the complainant to a former press release containing aggregate information on incidents involving passengers falling onto MTR tracks each year from 1997 to 2005.

3. The complainant requested ETWB to reconsider his request, as it was impossible to extract the information he needed from the aggregate data.

ETWB's Refusal

4. In August, ETWB replied that disclosure of the information requested might lead to identification of the deceased, the injured or their families. It did not consider the public interest in disclosure to outweigh the harm or prejudice that might result. It, therefore, refused the request under paragraph 2.15 of the Code on Access to Information ("the Code"), which states that *"disclosure of information about any person (including a deceased person)… may be refused, unless… the public interest in disclosure outweighs any harm or prejudice that would result"*.

First Complaint

5. In September, the complainant complained to this Office.

6. After due inquiries, we considered ETWB's refusal not justified, as the requested information on its own would not lead to identification of the deceased, the injured or their relatives.

Revived Request

7. In January 2007, the complainant revived his request for the information. In March, ETWB refused his request on similar grounds.

Second Complaint

8. The complainant then complained again to this Office. In April, The Ombudsman initiated a full investigation.

Our Findings and Comments

9. The Code enshrines Government policy to be transparent and accountable, thus making available as much Government-held information as possible to the public.

10. Paragraph 2.15.6 of the Guidelines to the Code provides that the restriction on disclosing personal information to third parties does not apply to information concerning an individual from which it is not reasonably practicable to identify the individual, e.g. anonymised statistical data.

11. The complainant's request was for anonymised information. It would not be reasonably practicable to ascertain or deduce from such information alone the identity of the individuals concerned.

Conclusion and Recommendation

12. The Ombudsman, therefore, concluded that ETWB's approach was over-cautious and in breach of both the letter and the spirit of the Code. The complaint was substantiated.

13. The Transport and Housing Bureau, which took over from ETWB in July 2007, agreed to our recommendation to release the information to the complainant.

A case of misapplication of the Code

Annex 19

Summaries of Selected Cases on Code on Access to Information

LANDS DEPARTMENT ("Lands D")

Case No. OMB 2007/3856(I)

Access to information – failing to disclose the identity of applicants granted approval for roadside publicity materials

The Complaint

The complainant asked a District Lands Office ("DLO") of Lands D for the names of certain individuals or organisations whose roadside non-commercial banners had been approved for display by DLO. His request was rejected on "privacy" grounds.

Lands D Practice

2. In response to a public complaint or enquiry, DLO would inform the complainant or enquirer whether a display had been approved, but not the name of the individual or organisation concerned.

Compliance with the Code

3. Under Government's Code on Access to Information ("the Code"), if a piece of information is held for or provided by a third party under an explicit or implicit understanding that such information would not be further disclosed, the department concerned may refuse a request for such information.

4. Lands D's Application Form for Display of Roadside Non-commercial Publicity Materials states that "the information provided by the applicant will only be used for processing the application…. Such information will not be disclosed in any form to any person, organisation or Government department."

5. Lands D's refusal of the complainant's information request on "privacy" grounds, was, therefore, in compliance with the Code.

Need for Disclosure

6. Nevertheless, as the contents of roadside non-commercial publicity materials are usually of public interest and could generate public enquiries or complaints, we considered it necessary to disclose the names of individuals or organisations whose displays have been approved.

Improvement Measure

7. Lands D has accordingly amended the application form to require applicants to consent to disclosure of their names in the public interest.

A case of need for greater transparency

Table 1

Caseload

		Reporting year#				
		03/04	04/05	05/06	06/07	07/08
(A)	**Enquiries received**	**12,552**	**11,742**	**14,633**	**15,626**	**12,169**
(B)	**Complaints received@**	**4,661**	**4,654**	**4,266**	**5,606**	**4,987**
(C)	**Complaints brought forward**	**772**	**1,088**	**719**	**676**	**942**
(D)	**Complaints for processing = (B) + (C)**	**5,433**	**5,742**	**4,985**	**6,282**	**5,929**
(E)	**Complaints handled and concluded**	**4,345**	**5,023**	**4,309**	**5,340**	**4,644**
	By preliminary inquiries	**1,834**	**1,873**	**1,758**	**1,643**	**1,938**
	By referral to complainee departments/ organisations for replies (INCH)	203	209	185	143	81
	By rendering assistance/clarification (RAC)	1,631	1,664	1,573	1,500	1,857
	By full investigation	**284**	**125**	**55**	**71**	**38**
	— Withdrawn/Discontinued	6	0	2	0	1
	— Substantiated	14	31	13	15	10
	— Partially substantiated	24	46	14	16	12
	— Unsubstantiated	236	45	26	39	14
	— Inconclusive^	1	0	0	0	0
	— Substantiated other than alleged	3	3	0	1	1
	By mediation	**7**	**6**	**12**	**2(6*)**	**1(3*)**
	Complaints screened out	**1,892**	**1,948**	**1,113**	**2,385**	**1,246**
	— Restrictions	1,259	1,132	351	394	375
	— Outside jurisdiction	633	816	762	1,991	871
	Complaints not pursued	**-**	**-**	**1,371**	**1,239**	**1,421**
	— Discontinued	328	1,071	137	57	436
	— Withdrawn			147	164	157
	— Not undertaken@	-	-	1,087	1,018	828
(F)	**Percentage of complaints concluded = (E) ÷ (D)**	**80%**	**88%**	**86%**	**85%**	**78.3%**
(G)	**Total cases carried forward = (D) - (E)**	**1,088**	**719**	**676**	**942**	**1,285**
(H)	**Number of direct investigations completed**	**5**	**5**	**4**	**4**	**4**
(I)	**Direct investigation assessment reports produced**	**5**	**6**	**6**	**5**	**2**

Each reporting year is from 1 April to 31 March of the next year.

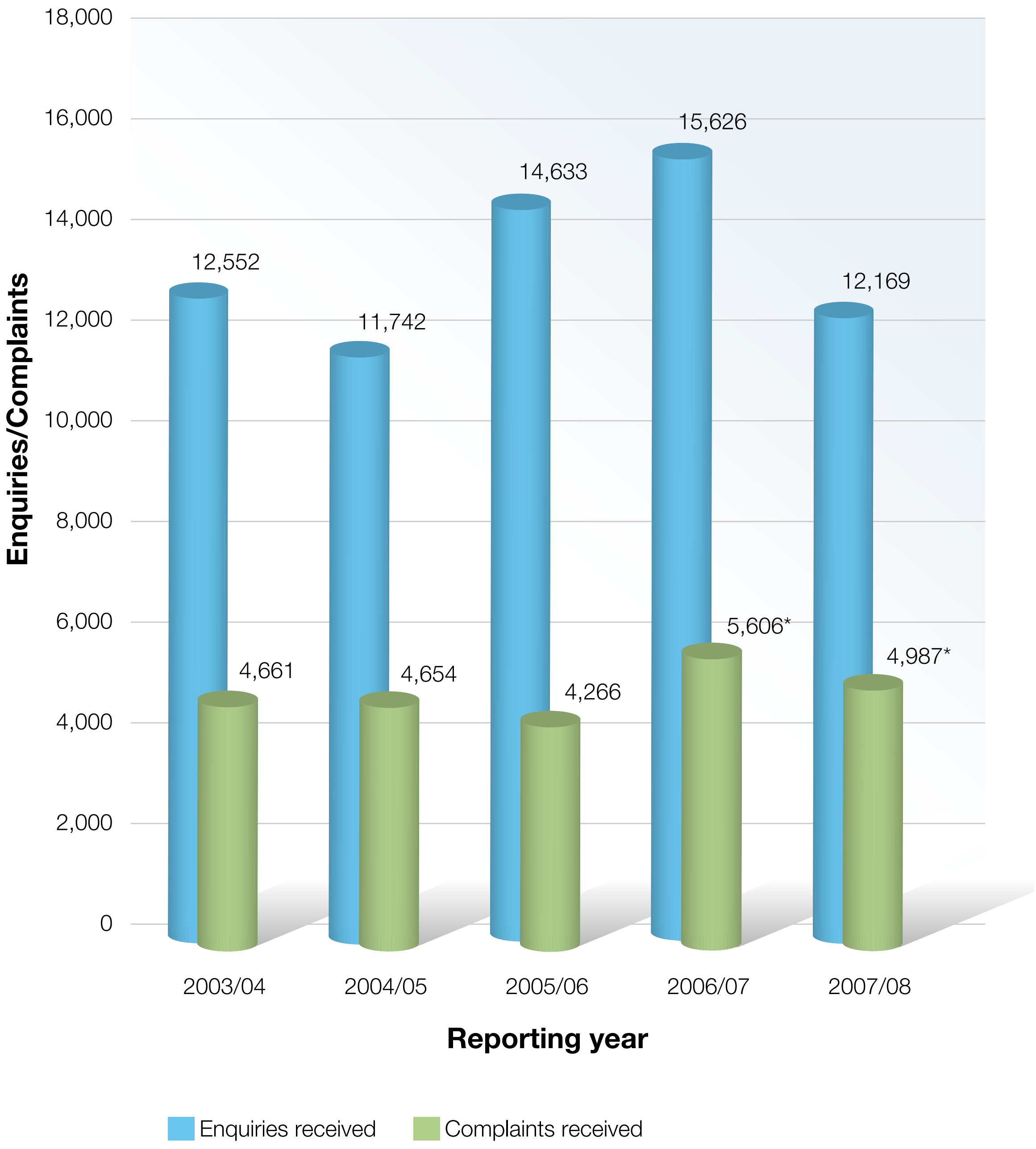
@ From 2006/07, excluding "complaints to others copied to us". Please refer to the "Glossary of Terms".

^ Previously "Incapable of Determination".

* Number of cases attempted for mediation but not accepted by party(ies) concerned.

Table 2

Enquiries/Complaints Received



* Figures exclude "complaints to others copied to us"

Table 3

Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Agriculture, Fisheries and Conservation Department	(AFCD)	69	52
Airport Authority	(AA)	22	11
Architectural Services Department	(Arch SD)	15	16
Audit Commission	(Aud C)	1	1
Auxiliary Medical Service	(AMS)	3	5
Buildings Department	(BD)	365	232
Census and Statistics Department	(C&SD)	4	5
Civil Aid Service	(CAS)	2	2
Civil Aviation Department	(CAD)	4	4
Civil Engineering and Development Department	(CEDD)	12	12
Companies Registry	(CR)	16	5
Correctional Services Department	(CSD)	39	112
Customs and Excise Department	(C&ED)	56	16
Department of Health	(DH)	85	45
Department of Justice	(D of J)	18	10
Drainage Services Department	(DSD)	22	11
Electrical and Mechanical Services Department	(E&MSD)	29	14
Employees Retraining Board	(ERB)	10	5
Environmental Protection Department	(EPD)	68	34
Equal Opportunities Commission	(EOC)	27	15
Financial Reporting Council	(FRC)	0	1
Fire Services Department	(FSD)	40	22
Food and Environmental Hygiene Department	(FEHD)	641	288
General Office of the Chief Executive's Office	(GOCEO)	2	3
Government Flying Service	(GFS)	1	0
Government Laboratory	(Govt Lab)	3	4
Government Logistics Department	(GLD)	2	5
Government Property Agency	(GPA)	5	6
GS - Chief Secretary for Administration's Office	(GS-CS)	18	22
GS - Civil Service Bureau	(GS-CSB)	13	19
GS - Commerce, Economic and Development Bureau	(GS-CEDB)	5	6
GS - Commerce, Industry and Technology Bureau	(GS-CITB)	1	0
GS - Constitutional and Mainland Affairs Bureau	(GS-CMAB)	1	2
GS - Development Bureau	(GS-DEVB)	4	5
GS - Education and Manpower Bureau	(GS-EMB)	29	9
GS - Education Bureau	(GS-EDB)	70	45
GS - Environment Bureau	(GS-ENB)	1	0

Organisation		Enquiries	Complaints
GS - Financial Services and the Treasury Bureau	(GS-FSTB)	5	4
GS - Food and Welfare Bureau	(GS-FHB)	7	2
GS - Health, Welfare and Food Bureau	(GS-HWFB)	1	7
GS - Home Affairs Bureau	(GS-HAB)	4	7
GS - Labour and Welfare Bureau	(GS-LWB)	3	5
GS - Security Bureau	(GS-SB)	3	5
GS - Transport and Housing Bureau	(GS-THB)	3	2
GS - Financial Secretary's Private Office	(GS-FSPO)	2	0
GS - Financial Secretary's Office	(GS-FS)	1	1
Highways Department	(Hy D)	50	34
Home Affairs Department	(HAD)	116	82
Hong Kong Arts Development Council	(HKADC)	2	1
Hong Kong Examinations and Assessment Authority	(HKEAA)	35	35
Hong Kong Housing Authority	(HKHA)	26	12
Hong Kong Housing Society	(HKHS)	24	18
Hong Kong Monetary Authority	(HKMA)	15	6
Hong Kong Observatory	(HKO)	8	3
Hong Kong Sports Institute Limited	(HKSI)	0	1
Hospital Authority	(HA)	440	170
Housing Department	(HD)	825	1,124
Immigration Department	(Imm D)	351	125
Information Services Department	(ISD)	1	3
Inland Revenue Department	(IRD)	131	49
Intellectual Property Department	(IPD)	5	6
Invest Hong Kong	(InvestHK)	0	1
Judiciary Administrator	(JA)	180	48
Kowloon-Canton Railway Corporation	(KCRC)	18	9
Labour Department	(LD)	118	45
Land Registry	(LR)	6	3
Lands Department	(Lands D)	256	419
Legal Aid Department	(LAD)	139	49
Legislative Council Secretariat	(LCS)	4	4
Leisure and Cultural Services Department	(LCSD)	192	193
Mandatory Provident Fund Schemes Authority	(MPFA)	46	17
Marine Department	(MD)	22	14
Office of the Telecommunications Authority	(OFTA)	47	15
Official Receiver's Office	(ORO)	41	28

Table 3
Distribution of Enquiries/Complaints

Organisation		Enquiries	Complaints
Planning Department	(Plan D)	9	18
Post Office	(PO)	107	64
Privacy Commissioner for Personal Data	(PCPD)	20	10
Radio Television Hong Kong	(RTHK)	5	6
Rating and Valuation Department	(RVD)	32	16
Registration and Electoral Office	(REO)	12	10
Securities and Futures Commission	(SFC)	16	7
Social Welfare Department	(SWD)	368	154
Student Financial Assistance Agency	(SFAA)	92	28
Television and Entertainment Licensing Authority	(T & ELA)	15	362
Trade and Industry Department	(TID)	2	0
Transport Department	(TD)	167	136
Treasury	(Try)	8	6
Urban Renewal Authority	(URA)	12	6
Vocational Training Council	(VTC)	20	13
Water Supplies Department	(WSD)	254	120
Total		**5,969**	**4,547**

Note 1. The total number of enquiries and complaints received in Table 1 are 12,169 and 4,987 respectively. They are different from the figures shown in Table 3 for the following reasons:

* An enquiry/complaint involving more than one organisation is shown against each of the organisation.
* Enquiries/complaints involving bodies outside The Ombudsman's jurisdiction are not shown.

Note 2. Organisations under Schedule 1 to The Ombudsman Ordinance with no enquiries/complaints received in the reporting year are not shown.

Note 3. Excluding "complaints to others copied to us" from 2006/07.

Table 4

Complaints* : Top Ten Organisations

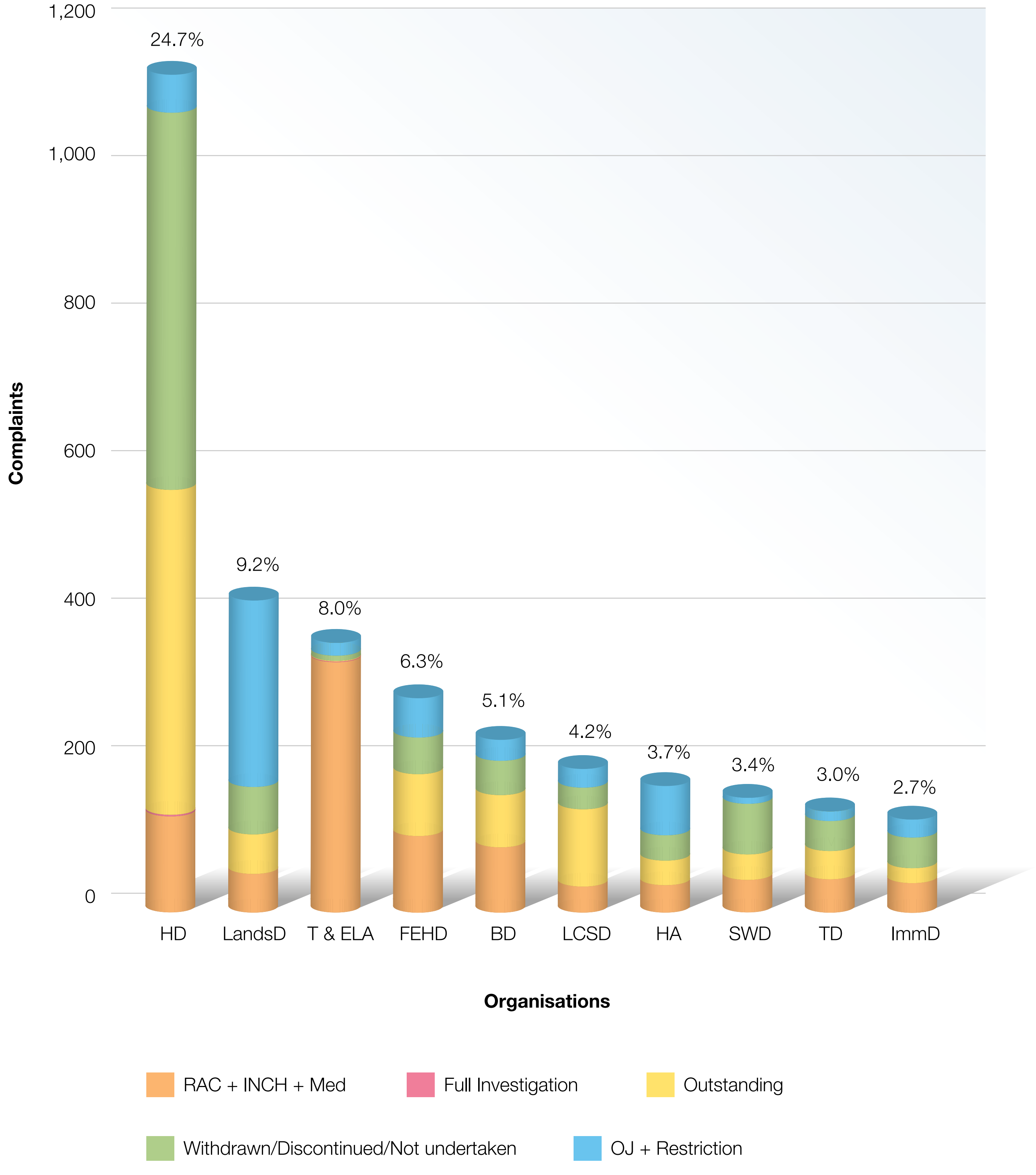


Table 5
Nature of Complaints

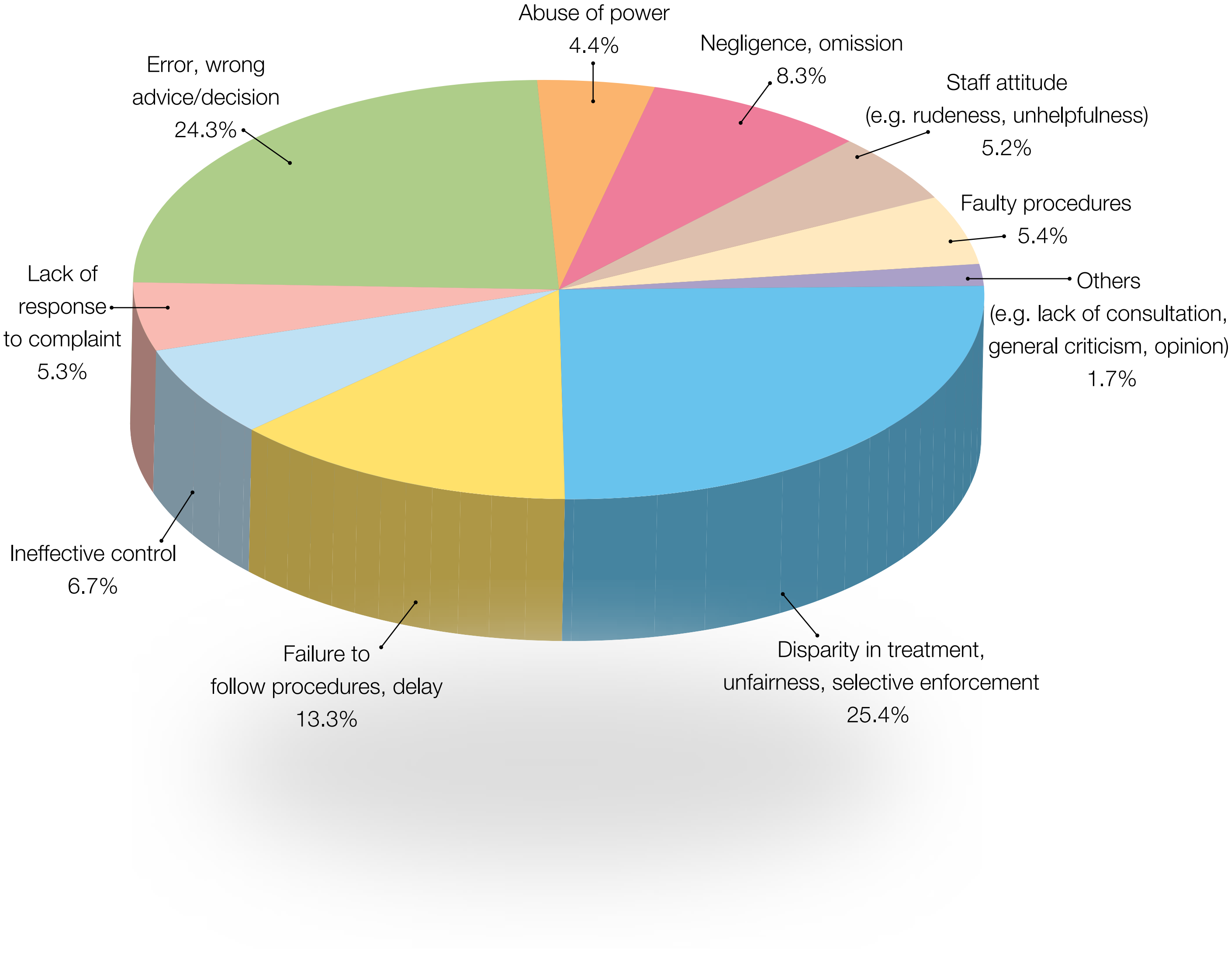


Table 6

Classification of Complaints Concluded: 4,644 Cases

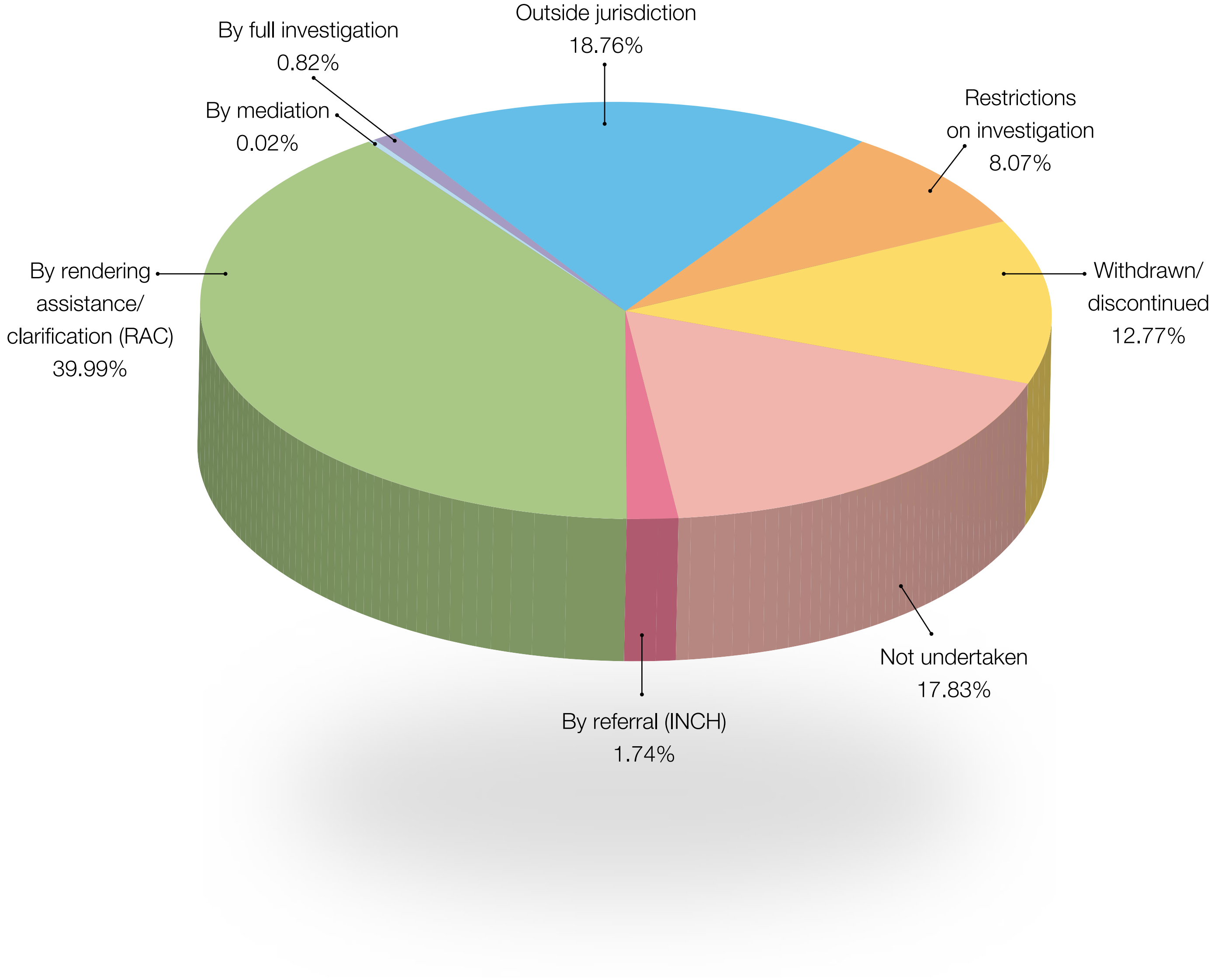


Table 7

Results of Complaints Concluded by Full Investigation: 38 Cases

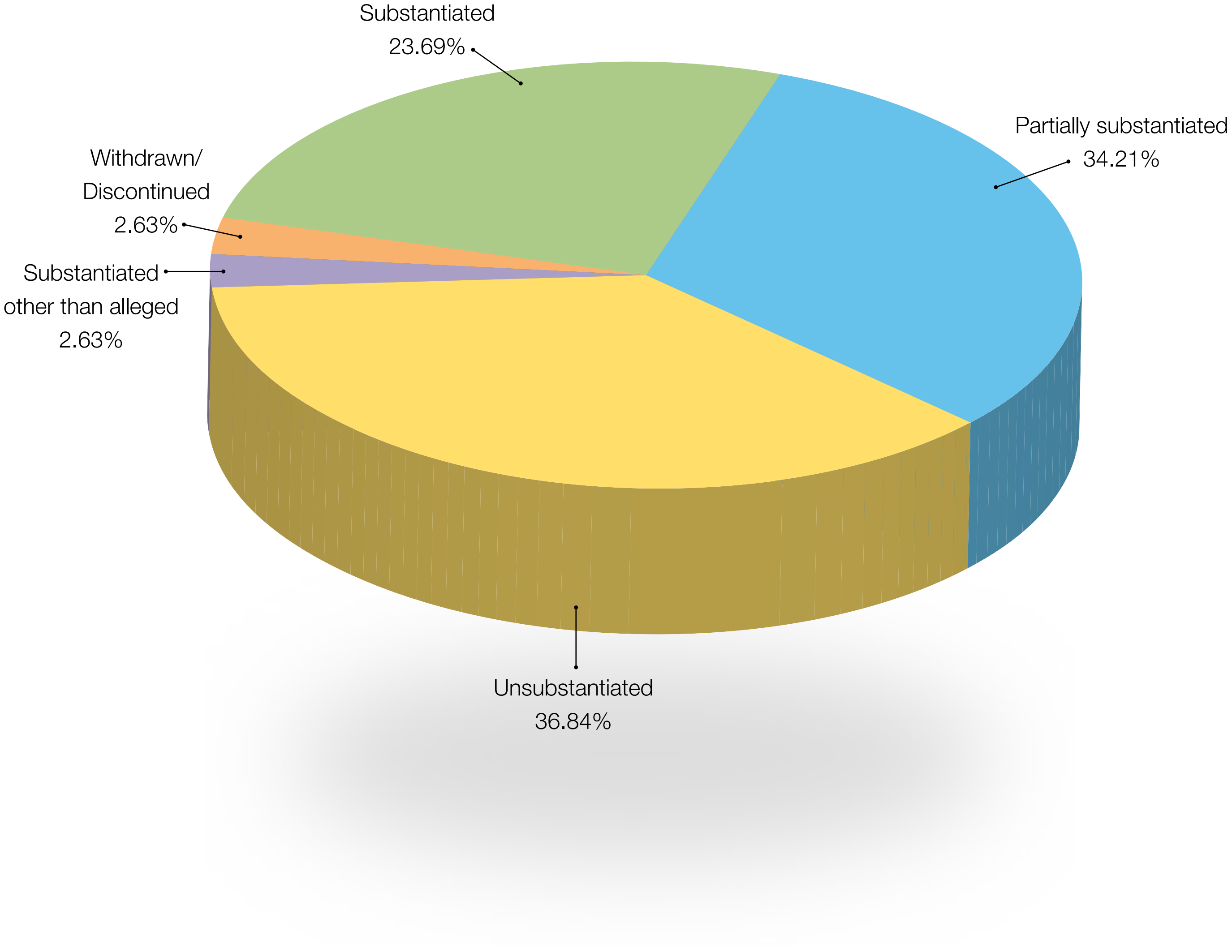


Table 8

Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Agriculture, Fisheries and Conservation Department	22	4 (18%)	18 (82%)		4
Airport Authority	3		3 (100%)		
Architectural Services Department	3		3 (100%)		
Audit Commission	1	1 (100%)			
Auxiliary Medical Service	1		1 (100%)		
Buildings Department	132	35 (26%)	96 (73%)	1 (1%)	32
Civil Aviation Department	2		2 (100%)		
Civil Engineering and Development Department	5		5 (100%)		
Correctional Services Department	53	3 (6%)	50 (94%)		
Customs and Excise Department	9	1 (11%)	8 (89%)		2
Department of Health	27	7 (26%)	20 (74%)		1
Department of Justice	2		2 (100%)		
Drainage Services Department	7		7 (100%)		
Electrical and Mechanical Services Department	6	1 (17%)	5 (83%)		
Environmental Protection Department	24	5 (21%)	19 (79%)		3
Equal Opportunities Commission	5		5 (100%)		
Fire Services Department	11	2 (18%)	9 (82%)		2
Food and Environmental Hygiene Department	186	56 (30%)	130 (70%)		63
General Office of the Chief Executive's Office	1	1 (100%)			
Government Laboratory	1		1 (100%)		
Government Logistics Department	1		1 (100%)		
Government Property Agency	1		1 (100%)		
Government Secretariat					
- Chief Secretary for Administration's Office	12	5 (42%)	7 (58%)		3
- Civil Service Bureau	1		1 (100%)		
- Commerce, Industry and Technology Bureau	1	1 (100%)			1
- Constitutional Affairs Bureau	1	1 (100%)			
- Development Bureau	1		1 (100%)		
- Education and Manpower Bureau	12	5 (42%)	7 (58%)		5
- Education Bureau	8	2 (25%)	6 (75%)		2
- Environment, Transport and Works Bureau	1		1 (100%)		
- Financial Services and the Treasury Bureau	1		1 (100%)		
- Health, Welfare and Food Bureau	5	1 (20%)	4 (80%)		1
- Home Affairs Bureau	3		3 (100%)		1
- Housing, Planning and Lands Bureau	2		2 (100%)		
- Labour and Welfare Bureau	1		1 (100%)		
- Security Bureau	2	1 (50%)	1 (50%)		
Highways Department	17	5 (29%)	12 (71%)		6
Home Affairs Department	47	9 (19%)	37 (79%)	1 (2%)	7
Hong Kong Examinations and Assessment Authority	13	8 (62%)	5 (38%)		14
Hong Kong Housing Authority	4		4 (100%)		

Table 8

Results of Complaints Concluded by Rendering Assistance/Clarification

Organisation	No. of complaints	Remedial action taken/suggested	No evidence of maladministration	Inconclusive	Ombudsman's suggestions on systemic improvement
Hong Kong Housing Society	8		7 (87.5%)	1(12.5%)	
Hong Kong Monetary Authority	2		2 (100%)		
Hong Kong Police Force	1		1 (100%)		
Hospital Authority	69	12 (17%)	53 (77%)	4 (6%)	7
Housing Department	192	20 (10%)	169 (88%)	3 (2%)	6
Immigration Department	52	10 (19%)	40 (77%)	2 (4%)	5
Independent Commission Against Corruption	1		1 (100%)		
Information Services Department	2	1 (50%)	1 (50%)		
Inland Revenue Department	23	5 (22%)	18 (78%)		
Intellectual Property Department	3		3 (100%)		
Judiciary Administrator	12	1 (8%)	11 (92%)		
Kowloon-Canton Railway Corporation	9	1 (11%)	8 (89%)		1
Labour Department	22	1 (5%)	21 (95%)		1
Land Registry	1		1 (100%)		
Lands Department	94	27 (29%)	66 (70%)	1 (1%)	24
Legal Aid Department	23	1 (4.4%)	21 (91.2%)	1 (4.4%)	
Legislative Council Secretariat	2		2 (100%)		
Leisure and Cultural Services Department	49	14 (29%)	35 (71%)		10
Mandatory Provident Fund Schemes Authority	11	2 (18%)	9 (82%)		2
Marine Department	5		5 (100%)		
Not Specified	5		5 (100%)		
Office of the Telecommunications Authority	8	1 (12.5%)	7 (87.5%)		2
Official Receiver's Office	12	4 (33%)	8 (67%)		3
Planning Department	12	2 (17%)	10 (83%)		2
Post Office	26	12 (46%)	14 (54%)		5
Privacy Commissioner for Personal Data	4		4 (100%)		
Rating and Valuation Department	5		5 (100%)		1
Registration and Electoral Office	5	2 (40%)	3 (60%)		
Securities and Futures Commission	12		12 (100%)		
Social Welfare Department	63	7 (11%)	56 (89%)		5
Student Financial Assistance Agency	13	2 (15%)	11 (85%)		1
Television and Entertainment Licensing Authority	339	334 (99%)	5 (1%)		
Transport Department	66	8 (12%)	56 (85%)	2 (3%)	4
Treasury	1		1 (100%)		
Urban Renewal Authority	1		1 (100%)		
Vocational Training Council	1	1 (100%)			1
Water Supplies Department	68	18 (26.5%)	49 (72%)	1 (1.5%)	10
Total	**1,857**	**640**	**1,200**	**17**	**237**

Note 1. Organisations under Schedule 1 to The Ombudsman Ordinance with no complaints concluded by Rendering Assistance/Clarification are not shown.

Table 9

Processing Time of Complaints Concluded

Processing Time of Complaints Concluded

Time \ Year	03/04	04/05	05/06	06/07	07/08
Less than 1 month	56.4%	52.8%	56.4%	64.7%	49.7%
1 – 3 months	14.8%	12.5%	15.4%	11.6%	18.4%
3 – 6 months	27.0%	32.9%	26.2%	22.3%	30.4%
6 – 9 months	1.0%	1.0.%	1.3%	0.8%	0.9%
9 – 12 months	0.4%	0.6%	0.3%	0.5%	0.4%
More than 12 months	0.4%	0.2%	0.4%	0.1%	0.2%
Total	**4,345**	**5,023**	**4,309**	**5,340**	**4,644**

Processing Time of Complaints Concluded by Full Investigation and Other Modes

Time \ Year	03/04	04/05	05/06	06/07	07/08
Concluded by full investigation					
Less than 3 months	37.7%	0.8%	3.6%	0.0%	0.0%
3 – 6 months	45.4%	36.8%	23.7%	36.6%	23.6%
6 – 9 months	8.4%	28.8%	32.7%	22.5%	21.1%
9 – 12 months	3.9%	24.8%	21.8%	32.4%	34.2%
More than 12 months	4.6%	8.8%	18.2%	8.5%	21.0%
Number of complaints	**284**	**125**	**55**	**71**	**38**
Concluded by other modes					
Less than 1 month	60.3%	54.1%	57.1%	65.6%	50.1%
1 – 3 months	13.2%	12.8%	15.6%	11.7%	18.6%
3 – 6 months	25.7%	32.8%	26.3%	22.1%	30.4%
6 – 9 months	0.5%	0.3%	0.9%	0.5%	0.7%
9 – 12 months	0.2%	0.0%	0.0%	0.1%	0.2%
More than 12 months	0.1%	0.0%	0.1%	0.0%	0.0%
Number of complaints	**4,061**	**4,898**	**4,254**	**5,269**	**4,606**